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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 494.

LESLIE C. STALLINGS, APPELLANT,

vs.

MAURICE SPLAIN, UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF COLUMBIA.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED SEPTEMBER 4, 1915.

(27,388)

(27,289)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 534.

LESLIE C. STALLINGS, APPELLANT,

vs.

MAURICE SPLAIN, UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF COLUMBIA.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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1 Court of Appeals of the District of Columbia.

No. 3225.

LESLIE C. STALLINGS, Appellant,

vs.

MAURICE SPLAIN, U. S. Marshal, &c.

Supreme Court of the District of Columbia.

No. 734. Habeas Corpus.

In the Matter of Lester C. Stallings, Application for Writ of Habeas Corpus.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Application for Writ of Habeas Corpus.

Filed June 11, 1918.

In the Supreme Court of the District of Columbia.

No. 734. Habeas Corpus.

In the Matter of LESTER C. STALLINGS, Application for Writ of Habeas Corpus.

To the Supreme Court of the District of Columbia:

Your petitioner, Lester C. Stallings, states as follows:

1st. That he is a citizen of the United States, and that he is a resident of the District of Columbia;

2nd. That on the 10th day of June, A. D. 1918, he was arrested in the District of Columbia by the United States Marshal in and for the said District, but not in response to any warrant issued in the District of Columbia, but on a warrant issued by the United
2 States District Court for the District of Wyoming—the purpose of said warrant being to require him to appear in the said United States Court for the District of Wyoming and there answer an indictment charging him with embezzlement;

3rd. That his arrest as aforesaid was not made in pursuance to any judicial proceeding in the District of Columbia whatsoever; that he has not been accorded due process of law as to notice of the alleged charges against him; that he is now, and will continue to be, illegally held in custody by the said United States Marshal of the District of Columbia unless and until granted the release herein prayed for;

Wherefore your petitioner prays that the Writ of Habeas Corpus be issued directing the United States Marshal for the District of Columbia to produce before this honorable court the body of your petitioner for a hearing according to law;

That upon such hearing an order be made releasing your petitioner from the custody of the said Marshal of the District of Columbia, or if that is not consistent, then bail be fixed in a reasonable sum for his release from custody pending such further hearing as the facts herein set forth may render meet and proper.

LESLIE C. STALLINGS,
Petitioner.

Subscribed and sworn to before me this the 11th day of June, A. D. 1918.

J. R. YOUNG, *Clk.*
By F. E. CUNNINGHAM,
Ass't Clk.

Fiat.

Let the writ issue as prayed—returnable before me forthwith.

WALTER I. McCOY,
Chief Justice.

Writ of Habeas Corpus.

Filed June 11, 1918.

* * * * * * *

The President of the United States to Maurice Splain, U. S. Marshal, Greeting:

You are hereby commanded to have the body of Lester C. Stallings detained under your custody, as it is said, together with the day and cause of his being taken and detained, by whatever name he may be called in the same, before the Honorable Walter I. McCoy, Chief Justice of the Supreme Court of the District of Columbia, in Criminal Court No. 2, Emery Building, City of Washington (immediately), after the receipt of this writ, to do and receive whatever shall then and there be considered of in his behalf, and have then and there this writ.

Witness, The Honorable Walter I. McCoy, Chief Justice of said Court, the 11th day of June, A. D. 1918.

[SEAL.]

J. R. YOUNG,
Clerk.
By F. W. SMITH,
Assistant Clerk.

Marshal's Return.

Service accepted this 11th day of June, 1918.

MAURICE SPLAIN,
U. S. Marshal, D. C.

Return of Maurice Splain, U. S. Marshal.

Filed July 16, 1918.

* * * * * * *

Now comes Maurice Splain, United States Marshal for the District of Columbia, by whom service of the writ of habeas corpus herein was accepted, respondent, and for return thereto states:

1. That on the 10th day of June, 1918, in the District of Columbia, he arrested the petitioner herein, under and by virtue of a bench warrant issued out of the District Court of the United States for the District of Wyoming, a copy whereof is hereto annexed and made part hereof, in which said warrant petitioner is described by the name of Leslie C. Stallings, and thereupon so admitted his name to be, and for a time detained petitioner pending the institution of proceedings for the removal of said petitioner to the District of Wyoming for trial before the District Court of the United States for said District of Wyoming, upon the charges in said warrant mentioned.

2. That petitioner remained in the custody of respondent from the time of his arrest as aforesaid until the 11th day of June, 1918, when, in obedience to said writ, respondent produced the body of petitioner before the Honorable Walter I. McCoy, Chief Justice of this Honorable Court, by whom, on motion by Petitioner, this proceeding was continued for hearing at a future time, and petitioner was released under bail bond in the sum of $2,000, conditioned for his future appearance herein, for which reason, and because of the matters hereinafter recited, respondent is now unable to have said petitioner here in Court.

3. That subsequently, on the 27th day of June, 1918, complaint was duly made before Isaac R. Hitt, Esquire, a United States Commissioner for the District of Columbia, charging petitioner with the commission of the offenses mentioned in said warrant, whereupon said Isaac R. Hitt, United States Commissioner as aforesaid,
4 duly issued his warrant for the arrest of said petitioner; and thereafter, on the 5th day of July, 1918, petitioner vo-untarily appeared before the said Isaac R. Hitt, United States Commissioner as aforesaid, in said District, for hearing, and submitted himself to the custody of this respondent; whereupon, petitioner having admitted his identity and former official character as described in said complaint and having entered thereto a plea of not guilty, the United States, on its part, produced a duly certified copy of the indictment pending against petitioner in the District Court of the United States for the District of Wyoming mentioned in the bench warrant of

which a copy is hereto annexed, the original bench warrant aforesaid, and certain correspondence from the U. S. Marshal for the District of Wyoming to the U. S. Marshal for this District, all of which were admitted in evidence without objection by petitioner; and thereupon, petitioner, by his attorney, William B. Jaynes, Esq., announced that he would offer no evidence on his part, but moved that petitioner be discharged, which said motion, after argument, was denied; whereupon, petitioner, with the advice of his counsel, requested to be admitted to bail for his appearance in the District Court of the United States for the District of Wyoming, on the first day of the next term thereof, and was thereupon admitted to bail, in the sum of $2,000, for his appearance therein as aforesaid, with George W. Ray as surety.

Wherefore, having made full and certain return to the writ herein, respondent prays that the petition herein be dismissed and the writ discharged.

MAURICE SPLAIN,
U. S. Marshal, D. C.

Maurice Splain, being first duly sworn, on his oath says that he has read the foregoing return by him subscribed, that he is acquainted with the contents thereof, and that he verily believes the statements of fact therein made to be true.

MAURICE SPLAIN.

Subscribed and sworn to before me this 16th day of July, 1918.
[SEAL.] JAMES A. C. PALMER,
Notary Public, D. C.

JOHN E. LASKEY,
United States Attorney, D. C.
By JAMES B. ARCHER.

THE UNITED STATES OF AMERICA,
District of Wyoming:

The President of the United States of America to the United States Marshal of the District of Wyoming, Greetings:

You are hereby commanded that you take the body of Leslie C. Stallings if he shall be found in your District, and safely him keep, so that you have his body before the District Court of the
5 United States, for the District of Wyoming, at the building used as an United States Court House, in the City of Cheyenne, in said District, forthwith, to answer unto the United States of America, in a certain bill of Indictment, preferred against him in said Court for violation of Sec. 97 F. P. C. 1910. Embezzlement of moneys in connection with land office matters (8 counts.)

And have you then and there this writ, with due return thereon endorsed.

Witness, The Honorable John A. Riner, Judge of the said District Court, and the seal thereof, at the City of [SEAL.] Cheyenne, in said District, this 15th day of May, A. D. 1918, and of the Independence of the United States the 142nd year.

CHARLES J. OHNHAUS,
Clerk.

By FLORENCE BRADLEY,
Deputy Clerk.

And on the back thereof the words and figures following:

"No. 906. District Court of the United States, District of Wyoming. The United States of America vs. Leslie C. Stallings. Bench Warrant. The defendant may be let to bail before an United States Commissioner in the sum of $2,000.00. Charles J. Ohnhaus, Clerk. C. L. Ringdon, United States District attorney."

Petition for Writ of Certiorari.

Filed July 18, 1918.

* * * * * * *

To the Honorable Court:

Your petitioner, Leslie C. Stallings, respectfully avers and shows the Court that he was arrested by the United States Marshal in and for the District of Columbia on June 10, 1918, by virtue of what purported to be a bench warrant issued by the United States District Court in and for the District of Wyoming, and which warrant charged embezzlement; that on June 11, 1918, your petitioner sued out a writ of habeas corpus in the Supreme Court of the District of Columbia, was ordered released from prison on the giving of bail in the sum of $2,000 to await further hearing on the said charge of embezzlement and that before a final hearing and full determination of that application by the Supreme Court of the District of Columbia and on July 5, 1918, your petitioner was again arrested by the United States Marshal for the District of Columbia in response to the commands of a bench warrant issued by Isaac R. Hitt, a United States Commissioner in and for the District of Columbia, and that
6 said last named warrant charged embezzlement committed in the United States Judicial District of Wyoming, and that after a hearing before the said United States Commissioner on July 5, 1918, your petitioner was ordered committed for extradition in default of bail in the sum of $2,000 for his appearance before the United States District Court in and for the District of Wyoming, and in order to avoid immediate imprisonment bail was given as suggested by the Commissioner. Your petitioner further avers that the said warrant of arrest by the said United States Commissioner was in truth and in fact for exactly the same counts and charges as those under which your petitioner was arrested on June 10, 1918, and under which

charges his said writ of habeas corpus was applied for and granted, and which had not been finally disposed of by the Supreme Court of the District of Columbia and the final disposition of which still awaits before this Honorable Court. Your petitioner avers that he does not believe that the said United States Commissioner acted within his legal powers in issuing the said warrant of arrest, in hearing evidence and argument in the matter, in ordering petitioner's commitment if bail should not be given, and therefore, your petitioner believes that all of the said Commissioner's actions, decrees, and orders of every kind and character whatsoever are wholly void and of no effect, because petitioner's application in habeas corpus was then pending in full force, power, and effect in this Honorable Court, because no final hearing and conclusion as to the merits thereof had been reached in this Court. Your petitioner further avers that he is not guilty of the crime charged, that he believes the allegations set forth in the respective warrants and in the certified copy of the indictment under which the last said warrant was issued by the said United States Commissioner do not legally charge a crime within the provisions and meaning of any statute of the United States; that he believes the Supreme Court of the District of Columbia has exclusive jurisdiction of your petitioner until his said application is fully disposed of by it, and that so believing he alleges that all of the proceedings before the said United States Commissioner are wholly null, void, and of no effect whatsoever, and that he is in law entitled to be released wholly from the purported power, force, and effect of said proceedings.

All the premises being duly considered, your petitioner prays this Court that an order be issued directing the Clerk of the Supreme Court of the District of Columbia to issue a writ of certiorari to the said Isaac R. Hitt, a United States Commissioner in and for the District of Columbia, returnable July 23, 1918, at 10 o'clock in the forenoon directing the said Commissioner to send to this Honorable Court all of the papers of whatsoever kind or character connected in and with the arrest, hearing, order of commitment or bond of your petitioner under the charge of embezzlement in the hearing as conducted by him on July 5, 1918, including certified copy of indictment and petitioner's motion for rehearing, as by statute in
7 such cases made and provided for use in connection with petitioner's hearing for final discharge on habeas corpus as prayed for in original petition.

LESLIE C. STALLINGS,
Petitioner.

DISTRICT OF COLUMBIA:

Personally appeared before me Leslie C. Stallings, who after being by me duly sworn according to law says:

I have read the foregoing petition by me signed. The said application for a writ of certiorari is not made for purposes of delay, and I verily believe that I have a meritorious defense in law to the charge of embezzlement as set forth in my foregoing petition.

LESLIE C. STALLINGS.

Subscribed and sworn to before me this 18th day of July, 1918.

J. R. YOUNG,
Clerk,
By F. W. SMITH,
Ass't Clerk.

DISTRICT OF COLUMBIA:

I do solemnly swear that I have read the foregoing petition by me signed, and that I know full well the contents thereof; and the statement of facts therein made as upon personal knowledge are true, and those made upon belief I believe to be true.

LESLIE C. STALLINGS.

Subscribed and sworn to before me this 18th day of July, 1918.

J. R. YOUNG,
Clerk,
By F. W. SMITH,
Ass't Clerk.

WILLIAM B. JAYNES,
Attorney for the Petitioner, Leslie C. Stallings.

Jurat.

Filed July 18, 1918.

* * * * * * *

To the Supreme Court of the District of Columbia:

Now comes Leslie C. Stallings, the original petitioner in the above styled and numbered cause, and alleges, affirms, and prays this Honorable Court as follows:

1st. That the original application in this said cause was filed on June 11th, 1918, as shown by Habeas Corpus docket in and for
8 the Supreme Court of the District of Columbia, the said application being numbered 734, and that your said affiant was released on bail in the sum of $2,000 to await a hearing on the merits July 2nd, 1918; that on the 2nd day of July, 1918, when the said cause came on for hearing in the Supreme Court of the District of Columbia an order of continuance was granted by the Honorable Justice Hitz, and the hearing fixed for 10 o'clock A. M., July 16th, 1918.

2nd. That before the final disposition of affiant's application for Habeas Corpus and on July 5th, 1918, he was arrested by the United States Marshal in and for the District of Columbia on a warrant issued on or about June 27th, 1918, by Isaac R. Hitt, a United States Commissioner in and for the District of Columbia, and that after a hearing before the said Commissioner on July 5th, 1918, the said Commissioner ordered the commitment of your affiant, and that in order

to avoid being placed in prison your affiant then and there gave bond in the sum of $2,000 in accordance with the direction of the said United States Commissioner.

3rd. That the issuance of the warrant by the said United States Commissioner and all of the proceedings thereunder before him embraced the same state of facts an grew out of the same alleged transactions and are based upon the same indictment as is now involved in the hearing before this Honorable Court. Your affiant, therefore, believes that the issuance of the said warrant of arrest, his arrest thereunder, and all actions and orders of the United States Commissioner made in said matter before him and during the pendency of this application and before its complete and final disposition by the Supreme Court of the District of Columbia were null, void, and of no legal effect whatsoever, and therefore on the 8th day of July, 1918, your said affiant filed an affidavit with the said United States Commissioner setting forth in full the pendency of affidavit's application for final release on Habeas Corpus, and asking said Commissioner to enter an order making of no effect his previous actions and orders to await the termination on the merits of affiant's aplication for discharge on Habeas Corpus. The United States Commissioner denied the request of affiant; and your affiant now prays this Honorable Court for an order declaring all of the proceedings and orders and actions taken thereunder by the United States Commissioner to be null, void, and of no effect whatsoever, because your said affiant has been continually since June 11th, 1918, in the legal custody of the Supreme Court of the District of Columbia, and will so remain in the absolute and exclusive control of said Court until his said application for release on Habeas Corpus is finally disposed of.

4th. That the warrant on which your affiant was arrested on June 10th, 1918, and the insufficiency of which is alleged by your affiant, states that the indictment herein was based on Section 97 of the Criminal Code of the United States, and the allegation in the certified copy of the indictment in the said cause, and which copy was not available for inspection by your affiant on June 11th, when the application for Habeas Corpus was filed, recites that certain moneys were received by your affiant while Acting as United States
9 Commissioner, and while so acting that said respective sums as alleged were embezzled by him. Your affiant states that he does not believe that he was an officer of the United States or an assistant to any such officer, within the meaning of Section 97 of the Criminal Code of the United States while acting as such United States Commissioner, but that he was an officer of the Court under which he held the appointment as United States Commissioner.

5th. That neither the said warrant nor the certified copy of the indictment does with sufficient particularity set out and describe the acts which constitute a charge of embezzlement, because there is no sufficient allegation as to the ownership of the moneys alleged to have been embezzled, and the ownership is neither alleged in the names of the respective parties from whom the moneys were re-

ceived nor in the receiver of the United States Land Office at Cheyenne, Wyoming, nor in the United States.

6th. You- said affiant further avers that he does not believe that while acting as United States Commissioner he was in any sense an officer to receive money from persons in any way indebted to the United States for the use and benefit of the United States, and, therefore, he does not believe that the said warrant and indictment in any way or manner charges a crime against any statute or law of the United States; and that if any money were received by him from any of the parties named in the said indictment (and which receipt and retention thereof he denies) for the purposes named in said indictment then the said sums were received by him in a private capacity and not as any officer of thee United States, nor as an assistant to any officer of the United States, nor as an officer of any court of the United States.

LESLIE C. STALLINGS.

Sworn to and subscribed before me on this the 16" day of July, A. D. 1918.

JOHN R. YOUNG,
Clerk,
By W. F. LEMON,
Ass't Cl'k.

Order for Writ of Certiorari.

Filed July 18, 1918.

* * * * * * *

The petition for a writ of Certiorari as prayed for in the above entitled and numbered cause having — duly considered by the Court the same is hereby approved, and the Clerk of this Court will proceed to issue the writ as requested in applicant's petition.

July 18, 1918. F. L. SIDDONS,
Justice.

WILLIAM B. JAYNES,
Attorney for Petitioner.

10 *Return of Isaac R. Hitt, U. S. Commissioner.*

Filed July 20, 1918.

Writ of Certiorari, Issued July 18th, 1918.

The President of the United States to Isaac R. Hitt, U. S. Com'r, Greeting:

For sufficient reasons shown by the petition in this case you are hereby commanded to certify and send to this Court, on or before July 23d, 1918, at 10 o'clock A. M., your proceedings in the case

of Lester C. Stallings with all things touching the same, as fully and entirely as it remains before you, by whatsoever names the parties may be called in said proceedings, together with this writ, that said Court may cause to be done what of right ought to be done in the premises.

Witness, the Honorable Walter I. McCoy, Chief Justice of said Court, the 18th day of July, A. D. 1918.

[SEAL.] J. R. YOUNG,
Clerk.
By F. W. SMITH,
Assistant Clerk.

(Endorsed:) Return July 19, 1918, to said Writ Herewith filed. Isaac R. Hitt, U. S. Commissioner.

Return to a Writ of Certiorari.

In the U. S. Commissioner Court of the District of Columbia.

No. 184.

UNITED STATES OF AMERICA, Plaintiff,

vs.

LESLIE C. STALLINGS, Defendant.

Action for Violation Sec. 97 of U. S. Penal Code.

Date. 1918.	Proceedings.
June 27.	Complaint filed—Issued Warrant of arrest.
July 5.	Hearing—arraignment of prisoner.
	Certified Copy of Indictment, original Bench Warrant & 2 Letters from Dist. of Wyoming.
" 5.	Found probable ground to believe said defendant guilty as charged.
" 5.	Bond $2,000—George W. Ray, Surety.
11 July 8.	Motion filed & affidavit, & application for Vacating of proceedings & orders. Denied by Commissioner.
July 19.	Return made to Writ by U. S. Commissioner Hitt, When the annexed writ of certiorari was received, whereby the proceedings before this Court stopped.

DISTRICT OF COLUMBIA, *ss:*

The Honorable Commissioner of the U. S. Commissioner Court, D. C., by virtue of the annexed writ, to said court delivered, do hereby certify the record and proceedings in the suit in the writ mentioned, unto the Supreme Court of the District of Columbia, together with all things touching the same, as fully and wholly as the same are now depending before said Commissioner's Court.

Witness the Honorable Commissioner of said U. S. Commissioner Court, this 19th day of July, A. D. 1918.

[SEAL.] ISAAC R. HITT.
U. S. Commissioner for the District of Columbia.

(United States Commissioner's Blanks, No. B.)

Warrant to Apprehend.

The President of the United States of America to the Marshal of the United States for the District of Columbia and to His Deputies, or Any or Either of Them:

Whereas, Frank M. Helan has made complaint in writing under oath before me, the undersigned, a United States Commissioner for the District of Columbia charging that Leslie C. Stallings, late of Town of Encampment, in the State of Wyoming did, on or about the sundry dates set out in attached copy Affidavit of Complaint which is made a part hereof, in violation of Section 97 of U. S. Penal Code in the State and district of Wyoming unlawfully convert to his own use and fraudulently embezzle eight certain sums of money, as is more fully set forth in certified copy of Affidavit of Complaint filed herein, which is attached hereto, and made a part hereof, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Leslie C. Stallings wherever found in your District, and bring his body forthwith before me or any other commissioner having
12 jurisdiction of said matter, to answer the said complaint, that he may then and there be dealt with according to law for the said offense.

Given under my hand and seal this 27th day of June, A. D. 1918.

[SEAL.] ISAAC R. HITT,
United States Commissioner as Aforesaid. [SEAL.]

Approved:
JOHN E. LASKEY,
United States Attorney, District of Columbia.
By GLENN WILLETT,
Designated Assistant.

(Endorsed:) United States District Court. The United States of America vs. Leslie C. Stallings. Warrant to Apprehend. Issued 27 day of June, 1918. Returned and filed 6 day of July, 1918. Isaac R. Hitt, U. S. Commissioner.

Return.

Received this Warrant on the 5th day of July, 1918, at Washington, D. C., and executed the same by arresting the within named

Leslie C. Stallings, at Washington, D. C., on the 5″ day of July, 1918, and have his body now in court, as within I am commanded.

MAURICE SPLAIN,
U. S. Marshal, District of Columbia.
Per F. L. HUDSON,
Deputy.

5″ day of July, 1918.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Before me, Isaac R. Hitt, a United States Commissioner for the District of Columbia aforesaid, personally appeared this day Frank M. Helan, who, being first duly sworn, deposes and says, that in violation of Section 97, of the Act of Congress approved March 4, 1909, commonly known and referred to as the Federal Penal Code of 1910, one Leslie C. Stallings, at the times hereinafter stated, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, did unlawfully, convert to his own use, and fraudulently embezzle divers sums of money, as hereinafter more particularly set forth, that is to say:

1st. That heretofore, to wit, on the seventh day of April, in the year of our Lord, one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then *being then* and there a United States Commissioner in and for the —
Wyoming, duly appointed, qualified and acting as such
13 United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, to wit, the amount of twenty eight dollars ($28.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Ira O. Wolfard to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle.

2nd. That heretofore to wit, on the nineteenth day of February, in the year of our Lord one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his con-

trol certain moneys to a large amount, to wit, the amount of twenty-two dollars ($22.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Robert F. Jones to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle.

3rd. That heretofore, to wit, on the second day of February, in the year of our Lord one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said Office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, to wit, the amount of twenty-two dollars ($22.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Ray G. Martin to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State of and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid, did unlawfully convert to his own use and fraudulently embezzle.

4th. That heretofore, to wit, on the fifth day of February, in the year of our Lord one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the
14 State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession, and under his control certain moneys to a large amount, to wit, the amount of thirty-one dollars ($31.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Hattie A. Tilton to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle.

5th. That heretofore, to wit, on the twentieth day of April, in the year of our Lord one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then and there a United States Commissioner in and for the

District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control, certain moneys to a large amount, to wit, the amount of twenty-two dollars ($22.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Percy H. Goldsmith to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle.

6th. That heretofore, to wit, on the first day of May, in the year of our Lord one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, to wit, the amount of twenty dollars and fifty cents ($20.50), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Albert Anderson to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle.

15 7th. That heretofore, to wit, on the twenty-fourth day of April, in the year of our Lord one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commisioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, to wit, the amount of eight dollars ($8.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Samuel S. Sage, to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid, did unlawfully convert to his own use and fraudently embezzle.

8th. That heretofore to wit, on the ninth day of May, in the year of our Lord one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the

State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, to wit, the amount of eight dollars ($8.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Joseph R. Peryam to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudently embezzle.

Contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

(Signed) FRANK M. HELAN.

Sworn to before me, and subscribed in my presence, this 27 day of June, A. D. 1918.

[SEAL.] ISAAC R. HITT,
United States Commissioner as Aforesaid.

A true Copy:
ISAAC R. HITT, [SEAL.]
U. S. Commissioner, D. C.

16 (Endorsed.)

U. S. Commissioner Isaac R. Hitt will issue a warrant, on the within complaint, for the arrest of Leslie C. Stallings.

(Signed) JOHN E. LASKEY,
Attorney of the United States in and for the District of Columbia.

THE UNITED STATES OF AMERICA

vs.

LESLIE C. STALLINGS.

Affidavit.

I hereby certify that the within is a true and correct copy of the original affidavit on file.

[SEAL.] ISAAC R. HITT,
U. S. Commissioner as Aforesaid.

(United States Commissioner's Blanks. No. F.)

Recognizance for Appearance Before U. S. Court.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That on this 5 day of July, A. D. 19-, before me, Isaac R. Hitt, a United States Commissioner for the said District of Columbia, personally came Leslie C. Stallings, Principal, and George W. Ray, Surety, and jointly and severally acknowledged themselves to owe the United States of America the sum of $2,000 Dollars, to be levied on their goods and chattels, land and tenements, if default be made in the condition following, to wit:

The Condition of this Recognizance is such, that if the said Leslie C. Stallings Principal shall personally appear before the District Court of the United States, in and for the District of Wyoming on the 1st day of the next 1918 term to be begun and held at the City of Cheyenne, at 10 o'clock A. M., and from time to time thereafter to which the case may be continued and then and there answer the charge of having, on or about certain sundry dates given below A. D. 1918, within said District, in violation of Section 97 U. S. Penal Code unlawfully converted to his own use & fraudulently embezzled certain sums of money received by him which moneys he
17 received as U. S. Commissioner to be paid over to the Receiver of U. S. Land Office at Cheyenne, Wyo., on following dates & of viz. am'ts:

Apr.	7/17	Rec'd	$28.	from	Ira O. Wolfard
Feb.	19/17	"	22.	"	Robert F. Jones
Feb.	2/17	"	22.	"	Ray G. Martin
Feb.	5/17	"	31.	"	Hattie A. Tilton
Apr.	20/17	"	22.	"	Percy H. Goldsmith
May	1/17	"	20.50	"	Albert Anderson
Apr.	24/17	"	8.	"	Samuel S. Sage
May	9/17	"	8.	"	Joseph R. Peryam

and then and there abide the judgment of the said Court, and not depart without leave thereof, then this Recognizance to be void, otherwise to remain in full force and virtue.

LESLIE C. STALLINGS. [SEAL.]
G. W. RAY. [SEAL.]

Taken and acknowledged before me on the day and year first above written.

[SEAL.]

ISAAC R. HITT,
United States Commissioner, as Aforesaid.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Geo. W. Ray, a surety, on the annexed recognizance, being duly sworn, deposes and says that he resides at 3332 31st St. N. W. in the City of Washington, D. C., in said District, that he is a freeholder in the City of Washington, D. C., that he is worth the sum of $50,000 Dollars, over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of Real Estate in the District of Columbia, 3249 & 3251 M St. N. W.

(Affiant's Signature) G. W. RAY.

Sworn to and subscribed before me this 5 day of July, A. D. 1918.

[SEAL.] ISAAC R. HITT,
United States Commissioner, as Aforesaid.

(Endorsed:) United States District Court. The United States of America vs. Leslie C. Stallings. Recognizance for Appearance Before District Court. Filed on July 5, 1918.

UNITED STATES OF AMERICA,
District of Wyoming, ss:

Within the Eighth Judicial Circuit of the United States.

In the District Court of the United States for the District of Wyoming, said District being a part of and within the Eighth
18 Judicial Circuit of the United States, at a regular term of said District Court, begun and held at the City of Cheyenne, in the County of Laramie and State of Wyoming, in the District of Wyoming and Judicial Circuit aforesaid, on the thirteenth day of May, in the year of Our Lord one thousand nine hundred and eighteen.

The Grand Jurors of the United States of America, good and lawful men, summoned from the body of said District of Wyoming, within said Eighth Judicial Circuit of the United States, then and there being, and then and there being duly impaneled, sworn and charged by the court aforesaid, to diligently inquire and true presentment make for said District of Wyoming, in the name and by the authority of the United States, upon their oaths do find, charge and present:

First Count.

That heretofore, towit, on the seventh day of April, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of this court, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such

officer, receive and have in his possession and under his control certain moneys to a large amount, towit, the amount of Twenty-eight dollars ($28.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Ira O. Wolfard to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,
United States Attorney for the District of Wyoming.

Second Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

That heretofore, towit, on the nineteenth day of February, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of this court, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so
19 acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, to-wit, the amount of Twenty-two dollars ($22.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Robert F. Jones to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,
United States Attorney for the District of Wyoming.

Third Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

That heretofore, towit, on the second day of February, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of this court, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States

Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, towit, the amount of Twenty-two dollars ($22.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Ray G. Martin, to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,
United States Attorney for the District of Wyoming.

Fourth Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

That heretofore, towit, on the fifth day of February, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of this court, being then and there a United States Commissioner in and for the
20 District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, towit, the amount of Thirty-one dollars ($31.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Hattie A. Tilton, to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,
United States Attorney for the District of Wyoming.

Fifth Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

That heretofore, towit, on the twentieth day of April, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of this court, being then and there a United States Commissioner in and for the District

of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, towit, the amount of Twenty-two dollars ($22.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Percy H. Goldsmith to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,
United States Attorney for the District of Wyoming.

Sixth Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

That heretofore, towit, on the first day of May, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and Dis-
21 trict of Wyoming, and within the jurisdiction of this court being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, towit, the amount of Twenty dollars and fifty cents ($20.50), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Albert Anderson to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,
United States Attorney for the District of Wyoming.

Seventh Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

That heretofore, towit, on the twenty-fourth day of April, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of this court,

being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, towit, the amount of Eight dollars ($8.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Samuel S. Sage to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,
United States Attorney for the District of Wyoming.

22 Eighth Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

That heretofore, towit, on the ninth day of May, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of this court, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, towit, the amount of Eight dollars ($8.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Joseph R. Peryam to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,
United States Attorney for the District of Wyoming.

Endorsements: No. 906, Crim. In the District Court of the United States for the District of Wyoming. United States of America vs. Leslie C. Stallings. Indictment for violation of Sec. 97 F. P. C. 1910. Embezzlement of moneys in connection with land office matters. (8 counts.) A True Bill: A. H. Marble, Foreman of Grand Jury. Filed May 15, 1918. Charles J. Ohmhaus, Clerk Charles L. Rigdon, United States Attorney for the District of Wyoming. David J. Howell, Assistant United States Attorney for the District of Wyoming.

UNITED STATES OF AMERICA,
District of Wyoming, ss:

I, Charles J. Ohnhaus, Clerk of the United States District Court for the District of Wyoming, do hereby certify the above and foregoing to be a true, correct and complete transcript and copy of the Indictment in case No. 906, United States of America vs. Leslie C Stallings, filed in this court May 15, 1918.

Witness my hand and the seal of said court, at Cheyenne, in said District Court, this 11th day of June, A. D. 1918.

[SEAL.] CHARLES J. OHNHAUS,
Clerk.
By FLORENCE BRADLEY,
Deputy.

23 *Department of Justice.*

United States Marshal's Office.

District of Wyoming.

CHEYENNE, WYO., June 11, 1918.

Mr. Morris Splain, U. S. Marshal, Washington, D. C.

DEAR SIR:

Enclosed please find certified copy of indictment in re Leslie C Stallings. Please make immediate arrangements to have him removed to this District or give bond to appear at the next term of the District Court, on Monday, November 11, 1918.

Respectfully,
DANIEL F. HUDSON,
United States Marshal.

H./K.
1 Encl.

THE UNITED STATES OF AMERICA,
District of Wyoming:

The President of the United States of America, To the United States Marshal of the District of Wyoming, Greeting:

You are hereby commanded that you take the body of Leslie C. Stallings if he shall be found in your District, and safely him keep, so that you have his body before the District Court of the United States, for the District of Wyoming, at the building used as *an* United States Court House, in the City of Cheyenne, in said District, Forthwith, to answer unto the United States of America, in a certain bill of Indictment preferred against him in said Court for violation of Sec. 97 F. P. C. 1910. Embezzlement of moneys in connection with land office matters. (8 Counts.)

And have you then and there this writ, with due return thereon endorsed.

Witness, the Honorable John A. Riner, Judge of the said District Court, and the seal thereof, at the City of Cheyenne, in [SEAL.] said District, this 15th day of May, A. D. 1918, and of the Independence of the United States the 142nd year.

CHARLES J. OHNHAUS,
Clerk.

By FLORENCE BRADLEY,
Deputy Clerk.

(Endorsed.)

24 No. 906.

District Court of the United States, District of Wyoming.

THE UNITED STATES OF AMERICA

vs.

LESLIE C. STALLINGS.

Bench Warrant.

The defendant may be let to bail before an United States Commissioner, in the sum of $2000.00.

CHARLES J. OHNHAUS,
Clerk.

* * * * * * *

C. L. RIGDON,
United States District Attorney.

Received & filed July 8/18. Isaac R. Hitt, U. S. Commissioner. Motion denied after argument of Counsel. Isaac R. Hitt, U. S. Commissioner. July 8/18.

In the United States Commissioner's Court in and for the District of Columbia, U. S. A.

In the Matter of LESLIE C. STALLINGS.

No. —.

Extradition Hearing.

Now comes Leslie C. Stallings, the defendant in the above entitled and numbered cause, as shown by the United States Commissioner's docket in and for the District of Columbia, and alleges, affirms, and prays the Honorable Commissioner of said Court as follows:

1st. That he was arrested in the District of Columbia on June 10th, A. D., 1918, under and by virtue of a bench warrant issued out of the United States District Court for the Judicial District of Wyoming, and transmitted to the United States Marshal for the District of Columbia, that said warrant charged the affiant with embezzlement under Section 97 of the United States Criminal Code, and that under the command of said bench warrant he was held in custody by the said United States Marshal.

2nd. That on June 11th, A. D., 1918, your affiant filed in due form an application for writ of Habeas Corpus as shown by Habeas Corpus docket in and for the Supreme Court of the District of Columbia, the said application being numbered 734, as shown by said docket; your said affiant alleged in said petition that he was illegally restrained of his liberty by reason of said arrest and incarceration; that the Honorable Chief Justice of the Supreme Court of the District of Columbia granted said application and directed that your affiant be released on bail in the sum of $2000 to await a hearing on the merits July 2nd, A. D., 1918; that a good and sufficient bail bond was given, and your affiant was released from custody under bail to await a final hearing and determination of his allegation of illegal arrest and restraint.

3rd. On the 2nd day of July, A. D., 1918, when the said cause came on for hearing in the Supreme Court of the District of Columbia, an order of continuance was granted by the Honorable Justice Hitz, and July 16th, A. D., 1918, fixed as the date for further hearing; and therefore because of the facts before stated said cause pending in the Supreme Court of the District of Columbia has not been finally disposed of by said Court.

4th. That on the 27 day of June, A. D., 1918, a warrant of arrest for your said affiant was issued from the Honorable United States Commissioner's Court in and for the District of Columbia charging your said affiant with embezzlement under a bench wararnt, and certified copy of indictment issued by and from the United States District Court in and for the District of Wyoming; the said warrant of arrest issued from the United States Commissioner's Court in and for the District of Columbia was based wholly and exclusively and grew out of the exact state of facts on which your affiant was arrested on June 10th, A. D., 1918, under the charge of embezzlement, and the sufficiency of which charge was denied by your affiant in his application for writ of Habeas Corpus as hereinbefore set forth, and the hearing on the allegation of said insufficiency is fixed in the Honorable Supreme Court for the District of Columbia for the 16th day of July, A. D., 1918, at 10 o'clock in the forenoon.

5th. That on a hearing under the warrant of arrest issued by the Honorable Commissioner's Court charging embezzlement under the warrant issued by the said Court and which hearing was held on July 5th, A. D., 1918, in the District of Columbia, it was ordered and decreed that your said affiant should return to the Judicial District of Wyoming to answer the said charge of embezzlement, and in order to avoid imprisonment and immediate return to said Dis-

[UNITED STATES COMMISSIONER'S BLANKS, No. L.]

TRANSCRIPT OF PROCEEDINGS IN CRIMINAL CASES.

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United States of America — District of Columbia SS. — Division

N. 184

THE UNITED STATES OF AMERICA

vs.

Leslie C. Stallings

FEES OF U. S. COMMISSIONER.
(See Act of May 28, 1896.)

6/27	Drawing complaint, with oath and jurat to same, 50c	50
	Copy of complaint, with certificate to same, 30c	30
	Issuing warrant of arrest, 25c; Entering marshal's return, warrant of arrest, 15c	75
7/6	Issuing subpena or subpenas in said case, 25c; with 5c for each of ... witnesses in addition to the first, ...c; Ent. return of subp., 15c	15
	Drawing temporary bond of defendant and sureties, taking acknowledgment of same and justification of sureties, 75c	
	Issu'g temp'y commitment and making copy of same, $1.00; Ent. ret. of temp. commit., 15c	
7/5	Administering oaths to 1 U. S. witnesses on trial, 10c. each ... and .... witnesses for defendant.	10
7/5	Hearing and deciding on criminal charges on the 5 day of July, 1918, and reducing the testimony to writing when required by law or order of court, per diem, $5.00	5 00
	Same, for one additional day on the ..... day of ..... 19..., because the hearing could not be completed in one day, per diem, $5.00	
9/	Drawing final bond of defendant and sureties, taking acknowledgment of same, and justification of sureties, 75c	75

Before me, Josiah R. Hitt, a United States Commissioner for said District, complaint and affidavit was made—warrant and certified copy of complaint was presented—on this 27 day of June, 1918, by Frank M. Hetzel U. S. Dep'y Marshal charging in substance that on or about the 9th inst. Sunday date of Guiar blow at State & Bank of Waynesburg in said District, the defendant, Leslie C Stallings in violation of Section 97, Chapter ____, Act ____, of the Revised Statutes of the United States Penal Code, did unlawfully receive & have in his possession & under his control certain moneys that were blow, which said moneys he had received as such U. S. Commissioner to be paid over to the Treasurer of the U. S. Court Office at Charleston, W. Va. and did contemptibly convert to his own use & possession contrary to law.

Complaint approved by the U. S. District Attorney on June 27, 1918

On June 27, 1918, issued warrant to Maurice Splain U. S. Marshal, for the District of Columbia

On July 6, 1918, warrant returned, indorsed as follows.

"Received this warrant on the 5 day of July, 1918, at Washington, D.C. and executed the same by arresting the within named Leslie C Stallings at Washington D C on the 5 day of July, 1918, and have his body now in court, as within I am commanded.

Maurice Splain U. S. Marshal. District of Columbia by F. L. Hudson Deputy."

....Issuing final commitment and making copy of same, $1.50; Ent. return of final commit., 10c.....

....Recognizance of all witnesses in the case, defendant being held for court, 10c.....

....Oath to ..... U. S. witnesses of to attendance and travel, 5c. each

....Order, in duplicate, to pay first witness on behalf U. S. 10c., and to for each of ..... additional U. S. witnesses, ... c.....

7/6 ....Transcr. of proceed., required by order of court, and transm. of original papers to court, 60c..... 60

....Copy of warrant of arrest, with certificate to same, when defendant is held for court and original papers are not sent to court, 60c

....Examination and certificate under Section 1042, R. S., and all services connected therewith (date of commitment to serve sentence, ... 19....; period of imprisonment named in sentence, ...; ..... amount of fine and costs, $.....), $2.00.....

$8 / 5

Fees of Witnesses, Guards, etc. (name of each).....

No. 2225
Warrant } page 43
Subpoena

On _____, 19__, issued subpena for the following witnesses in behalf of U. S. (or) defendant: Asa Hatfield $2.1. from Ira O. Holland Feb 19/17 Each $.22. from Ephie G. Jones Feb 9/17 Each .22 miles Ray A. Martin, Feb 27/17 $2.1. from Hattie A. Tolson Feb 20/17 Each .22. from H. Hatfield, May 7/17 Each .22 from Samuel Yeager, May 8/17 Received $ from Geo. H. Pegg, U.S. Marshal, for service and travel of witnesses.

On _____, 19__, said subpena was returned, indorsed as follows: "Received this writ _____, 19__, and on or before _____, 19__, served the same on the within named _____ by leaving a certified copy thereof with each of them personally; and on the within named _____ by leaving such copy at the usual place of residence of each of them. The other person ___ within named not found.

_____ U. S. Marshal _____ District of
_____ by _____ Deputy.

On _____, 19__, issued subpena for the following witnesses in behalf of U. S. (or) defendant: _____

On _____, 19__, said subpena was returned, indorsed as follows: "Received this writ _____, 19__, and on or before _____, 19__, served the same on the within named _____ by leaving a certified copy thereof with each of them personally; and on the within named _____ by leaving such copy at the usual place of residence of each of them. The other person ___ within named not found.

_____ U. S. Marshal _____ District of
_____ by _____ Deputy.

On July 5, 1917, defendant was brought before me, the said United States Commissioner, at my office, in the Maryland Pldg in said District, by A. W. Joyce Deputy U. S. Marshal; and the complaint was then and there fully read and explained to the said defendant, who thereupon, for plea, said he is "Not guilty" as charged in said complaint.

43

No. 2225
Warrant } page 42
Subpoena

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Stalbrago
Sylam. } page 438.

trict for trial he gave bail in the sum of $2000 to insure his appearance and answer said charges of embezzlement.

6th. In view of the foregoing state of facts your affiant respectfully asks that an order of the Honorable Commissioner's Court be entered setting aside and making of no avail his arrest and order of commitment and the fixing of bail and bond given herein, and that the said hearing of the probable cause for removal to the Judicial District of Wyoming be fixed to await the final hearing of affiant's application now pending before the Supreme Court of the District of Columbia, and your said affiant here alleges that said
26 Court under the said writ of Habeas Corpus has full, complete, and exclusive jurisdiction of all charges in this said matter until finally disposed of by appropriate orders of the said Court; and your said affiant further alleges that he believes all orders of the Honorable Commissioner's Court relating to his custody and control under the facts as before set forth are null, void, and of no force whatsoever.

7th. Your affiant therefore asks that all orders directing his arrest and appearance before the United States District Court in and for the District of Wyoming be held null, void, and of no effect, and that all papers relating thereto be held in the custody of the United States Commissioner in and for the District of Columbia to await the final decree on the application for Habeas Corpus as hereinbefore set forth.

LESLIE C. STALLINGS.

Subscribed and sworn to before me this the 8th day of July, A. D., 1918.

[SEAL.] M. GRACE DELANY,
Notary Public D. of C.

(Endorsed.)

In the U. S. Commissioner's Court.
Extradition Matter of Leslie C. Stallings.
Affidavit and application for vacating of proceedings and orders.
Received & filed July 8/18.

ISAAC R. HITT,
U. S. Commissioner.

Motion denied.

ISAAC R. HITT,
U. S. Commissioner.

(Here follow diagrams marked pages 43, 43*a* and 43*b*.)

Demurrer.

Filed in Open Court July 25, 1918.

* * * * * * *

Now comes Leslie C. Stallings, the applicant in the above styled and numbered cause, and respectfully shows the Honorable Court:

1st. That the statements and matters set forth in the return of the United States Marshal in and for the District of Columbia
27 in response to the writ of Habeas Corpus in this cause were not and are not sufficient in law to warrant the action taken by the said Marshal as set forth by him;

2nd. That the respective warrants herein involved and the indictment, as shown by the certified copy thereof filed in this cause and the matters therein stated in matter and in form are not sufficient in law to warrant the restraint of this applicant in any manner.

LESLIE C. STALLINGS.

Decree.

Filed August 20, 1918.

* * * * * * *

This cause coming on for hearing, on the twenty-fifth day of July, 1918, upon the petition for the writ of habeas corpus, the writ issued thereon, the return thereto, and the demurrer to said return, filed herein; and the petition for the writ of certiorari, the writ issued thereon, and the return thereto, filed herein, the same having been argued by counsel for the petitioner and the respondents herein, and submitted to the court; and the court now being fully advised, it is, this 20th day of August, 1918,

Adjudged, Ordered and Decreed, that petitioner's demurrer to the return herein filed by the respondent be, and it hereby is, overruled, with leave to plead to or traverse said return as petitioner may be advised.

And the petitioner, by his counsel, having duly excepted to said action of the Court, and having elected to stand on said demurrer, declaring he would neither plead to nor traverse said return, it is further

Adjudged, Ordered and Decreed, that said petition for writ of habeas corpus be, and it hereby is, dismissed; that the writ thereon issued be, and it hereby is, discharged; and that respondent have judgment for his costs and execution therefor.

And petitioner, by his counsel, having duly excepted to said action of the court, and having waived objection to the form of return to the writ of certiorari herein filed, though reserving to himself the benefit of all insufficiencies of substance therein appearing, it is further

Adjudged, Ordered and Decreed, that the petition for said writ of certiorari and the writ issued thereon be, and they hereby are, dismissed; and that the proceedings shown by the return to said writ, herein filed, be, and they are hereby, remanded to the respondent, Isaac R. Hitt, United States Commissioner, for further action according to law.

And petitioner, by his counsel, having duly excepted to said action of the court, and having in open court given notice of his intention to prosecute an appeal to the Court of Appeals, upon motion by counsel for petitioner, it is further

28 Ordered, that cost bond on appeal be of one hundred dollars, or in lieu thereof, a deposit with the clerk of this court of fifty dollars.

By the Court:

F. L. SIDDONS,
Justice.

Memorandum.

September 10, 1918.

Bond on appeal $100 with Geo. W. Ray as surety, approved and filed.

Designation of Record.

Filed October 11, 1918.

* * * * * * *

In the preparation of the record for the Court of Appeals, District of Columbia, in the above entitled cause let the same be comprised of the following filings:

Petition for Writ of Habeas Corpus:
Order directing issuance of writ:
Writ of Habeas Corpus issued to U. S. Marshal:
Return of U. S. Marshal:
Petition for Writ of Certiorari:
Affidavit of Petitioner filed with Petition:
Order for Writ:
Return of Isaac R. Hitt, United States Commissioner, and complete copy of proceedings before said Commissioner:
Defendant's demurrer:
Decree of Mr. Justice Siddons dismissing petition.
Assignment of errors.
Designation of record.

Respectfully submitted by

W. B. JAYNES,
Attorney for Appellant.

Assignments of Error.

Filed October 19, 1918.

* * * * * * *

1st. The Court erred in overruling Defendant's demurrer.

2nd. The Court erred in overruling Defendant's plea that the United States Commissioner was wholly without jurisdiction in this said cause during the pendency in the Supreme Court of the District of Columbia of an application for discharge on Habeas Corpus, and which in no manner had been heard on its merits.

29 3rd. The Court erred in overruling Defendant's plea that the allegations of the respective counts in the indictment fail to charge a crime against any law, or laws of the United States, and especially against the provisions of Section #97 of the Criminal Code of the United States.

4th. The Court erred in overruling Defendant's plea that a United States Commissioner is not an officer of the United States within the meaning of Section #97 of the Criminal Code of the United States.

5th. The Court erred in overruling Defendant's plea that the ownership of the respective sums of money alleged to have been embezzled is not set forth with sufficient legal precision as to advise him fully in respect thereto.

6th. The Court erred in directing Isaac R. Hitt, United States Commissioner, to return his transcript of proceedings in this cause, together with the original bail bond, into the United States Court for the District of Wyoming, prior to the final disposition of this said cause on appeal.

W. B. JAYNES,
Atty.

Memorandum.

October 25, 1918.

Time to file transcript of record extended to and including November 15, 1918.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 48, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, In the Matter of Lester C. Stallings, Applica-

tion for Writ of Habeas Corpus, Habeas Corpus No. 734, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 13th day of November, 1918.

JOHN R. YOUNG,
Clerk.

[Seal of Supreme Court of the District of Columbia.]

Endorsed on cover: District of Columbia Supreme Court. No. 3225. Leslie C. Stallings, appellant, vs. Maurice Splain, U. S. Marshal. Court of Appeals, District of Columbia. Filed Nov. 15, 1918. Henry W. Hodges, Clerk.

30 Tuesday, April 1st, A. D. 1919.

No. 3225.

* * * * * * *

LESLIE C. STALLINGS, Appellant,

vs.

MAURICE SPLAIN, United States Marshal in and for the District of Columbia.

The argument in the above entitled cause was commenced by Mr. W. B. Jaynes, attorney for the appellant, and was continued by Mr. J. B. Archer, attorney for the appellee, and was concluded by Mr. W. B. Jaynes, attorney for the appellant.

31 April Term 1919.

Monday, May 5th, A. D. 1919.

* * * * * * *

No. 3225.

LESLIE C. STALLINGS, Appellant,

vs.

MAURICE SPLAIN, United States Marshal in and for the District of Columbia.

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged

and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

PER MR. JUSTICE ROBB.

May 5, 1919.

32 Court of Appeals of the District of Columbia.

No. 3225.

LESLIE C. STALLINGS, Appellant,

v.

MAURICE SPLAIN, United States Marshal in and for the District of Columbia, Appellee.

Opinion.

Mr. Justice ROBB delivered the opinion of the Court:

This appeal is from a decree in the Supreme Court of the District discharging the writ of habeas corpus that had issued on appellant's petition.

Appellant, hereinafter called the petitioner, was arrested in this District on June 10, 1918, on a bench warrant from the United States District Court for the District of Wyoming charging him with embezzlement. On June 11th he filed his petition for a writ of habeas corpus in the court below and was released on bail pending a hearing. On the 27th of June, 1918, a complaint was duly made before a United States commissioner in this District, charging petitioner with embezzlement in Wyoming. On the 5th of July, following, petitioner was arrested on the commissioner's warrant and appeared before the commissioner, whereupon petitioner having admitted his identity and former official character as described in said complaint and having entered thereto a plea of not guilty, the United States, on its part, produced a duly certified copy of the indictment pending against petitioner in the District Court of the United States for the District of Wyoming mentioned in the bench warrant * * * certain correspondence from the United States Marshal for the District of Wyoming to the United States Marshal for this District, all of which were admitted in evidence without objection by petitioner." Thereupon petitioner moved for his discharge, the motion was denied, and petitioner, at his request, was admitted to bail for his appearance in the District Court of the United States for the District of Wyoming.

On July 18, 1918, petitioner applied in the habeas corpus proceeding for a writ of certiorari to the commissioner, averring that the acts of the commissioner "are wholly void and of no effect, because petitioner's application in habeas corpus was then pending in full force." The writ was directed to issue. Petitioner then demurred to the return of the marshal herein, which return set forth the foregoing facts. The case came on for hearing "upon the petition for the writ of habeas corpus, the writ issued thereon, the return thereto, and the de-

murrer to said return filed therein; and the petition for the writ of certiorari, the writ issued thereon, and the return thereto." Petitioner's demurrer to the marshal's return was overruled, with leave to plead to or traverse the return. Petitioner electing to stand upon his demurrer, the court dismissed the petition and discharged the writ.

The preliminary arrest of petitioner which gave rise to this proceeding was regular and proper. Code, Sec. 930; 2 Moore on Extradition, Secs. 592 to 595; Union Pacific R. Co. v. Belek, 211 Fed., 699. It is settled law that an accused person may be held a reasonable time to await the preparation and transmission of extradition papers from the demanding State.

As to the contention that the commissioner was wholly without jurisdiction during the pendency of the habeas corpus proceedings, and therefore that his acts were null and void, it may not be questioned that he had jurisdiction of the subject-matter before him. Petitioner had given bail for his appearance in the habeas corpus proceeding, in which he sought to have tested the legality of his detention under the preliminary warrant. He was arrested under the warrant issued by the commissioner upon final complaint. Hearing was accorded him by the commissioner, which resulted in his being held for extradition. Instead of seeking protection from the court out of which the writ of habeas corpus had issued, petitioner elected to give bail before the commissioner for his appearance in Wyoming, there to answer the indictment against him. Inasmuch as the commissioner had jurisdiction on the subject-matter, petitioner by pleading to the complaint and giving bail, waived any right to question the jurisdiction of the commissioner over the person. And this conclusion is not inconsistent with the decision of the court in the Farez case, 7 Blatchford Cir. Ct. Rep., 34, 8 Fed., Cases, 1006, relied upon by petitioner. Farez was arrested and sued out a writ of habeas corpus. Thereupon another warrant,, designed to cure the defects in the first was placed in the hands of the marshal and that officer served the second warrant upon Farez, who already was in his custody. The opinion states that "no proceeding took place under the second warrant, except the arrest of Farez under it." The court found that "when the question of the lawfulness of the detention under the first warrant should have been disposed of, then the marshal could properly proceed to execute the second warrant, and not before." That the arrest under the second warrant was not wholly void is apparent from the fact that there follows a careful consideration of the second warrant and a finding that it, too, was defective. The most that may be said in the present case is that the marshal should have held the warrant issued by the commissioner until the decision of the court; but, as we have seen, it by no means follows that the proceeding before the commissioner was void. Inasmuch as the commissioner had jurisdiction of the subject-matter and petitioner submitted to jurisdiction over his person by pleading and giving bail before the commissioner to appear in Wyoming, the court in the habeas corpus hearing was not called upon further to inquire into the proceeding before the commissioner.

There is another view that may be taken of this case, with the same result. If, as petitioner contends, the warrant of the commissioner was "ilegal, null and void" and "his entire proceedings were void and of no effect," then the preliminary warrant remained. As we have found that the arrest under that preliminary warrant was regular and legal, it results that in any event the writ was properly discharged.

The decree is affirmed, with costs. Affirmed.

33 In the Court of Appeals, District of Columbia, January Term, 1919.

No. 3225.

LESLIE C. STALLINGS, Appellant,

vs.

MAURICE SPLAIN, United States Marshal in and for the District of Columbia, Appellee.

Now comes Leslie C. Stallings, by his attorney of record, William B. Jaynes, and respectfully asks that permission be granted for the prosecution of an appeal to the Honorable Supreme Court of the United States from the final judgment rendered by the Honorable Court of Appeals of the District of Columbia in the above styled and numbered cause on the 5th day of May, A. D., 1919, and states that he verily believes the below enumerated questions requiring a construction of certain laws of the United States are involved, and which therefore he says brings this application clearly within the certain provisions of Section 250 of the Judicial Code of the United States as applicable to appeals from the final judgments and decrees of the Court of Appeals of the District of Columbia, and therefore seeks a further determination of the involved questions by submitting them to the Honorable Supreme Court of the United States. Among other legal questions which may be involved are the following which seem of the most high importance to the petitioner:

1st. The scope of the powers and duties of a United States Commissioner as made and provided for in the laws of the United States:

2nd. The laws of the United States as related to the rights of an applicant under the Writ of Habeas Corpus:

3rd. The construction of Section 97 of the Code of Criminal Procedure of the United States as applied to acts authorized or unauthorized of the United States Commissioners:

4th. The laws of the United States as related to the removal of a defendant under indictment pending in a Court of the United States

from a judicial district of the United States other than that wherein the indictment was returned and is pending.

WILLIAM B. JAYNES,
Attorney for Appellant.

Appeal allowed,
C. J. SMYTH,
Chief Justice.

(Endorsed:) No. 3225. Leslie C. Stallings, Appellant, vs. Maurice Splain, United States Marshal in and for the District of Columbia, Appellee. Motion for appeal to the United States Supreme Court Court of Appeals, District of Columbia. Filed Jul. 30, 1919. Henry W. Hodges, Clerk.

34 Wednesday, July 30th, A. D. 1919.

* * * * * * *

No. 3225.

LESLIE C. STALLINGS, Appellant,

vs.

MAURICE SPLAIN, United States Marshal in and for the District of Columbia.

On consideration of the appellant's motion for an appeal to the Supreme Court of the United States in the above entitled cause, It is by the Court this day ordered that said motion be, and the same is hereby granted, and the bond for costs is fixed at the sum of three hundred dollars.

35 (*Bond on Appeal.*)

Know all men by these presents, That we, Leslie C. Stallings, as principal, and G. W. Ray, as surety, are held and firmly bound unto Maurice Splain, United States Marshal in — for the District of Columbia, in the full and just sum of three hundred dollars, to be paid to the said Splain his certain attorney, executors, administrators, or assigns; to which payment, well and rtuly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this first day of August, in the year of our Lord one thousand nine hundred and nineteen.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between Leslie C. Stallings and Maurice Splain, United States Marshal in and for the District of Columbia, No. 3225, January Term, 1919, a decree was rendered against the said Stallings and the said Stallings having prayed and obtained an appeal to the Supreme Court of the United States to re-

verse the decree in the aforesaid suit, and a citation directed to the said *the said* Splain citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, That if the said Stallings shall prosecute said appeal to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

LESLIE C. STALLINGS. [SEAL.]
G. W. RAY. [SEAL.]

Sealed and delivered in presence of:
W. B. JAYNES.

Approved by:
CONSTANTINE J. SMYTH,
Chief Justice Court of Appeals
of the District of Columbia.

Aug. 1, 1919.

Approved as to financial sufficiency of G. W. Ray, Surety.
PAUL B. CROMELIN,
Ass't U. S. Attorney, D. C.

[Endorsed:] No. 3225. Leslie C. Stallings, Appellant, vs. Maurice Splain, United States Marshal in and for the District of Columbia. Bond for costs on appeal to Supreme Court, U. S. Court of Appeals, District of Columbia. Filed Aug. 6, 1919. Henry W. Hodges, Clerk.

36 UNITED STATES OF AMERICA, *ss:*

To Maurice Splain, United States Marshal in and for the District of Columbia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Leslie C. Stallings is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Constantine J. Smyth, Chief Justice of the Court of Appeals of the District of Columbia, this 6th day of August, in the year of our Lord one thousand nine hundred and nineteen.

CONSTANTINE J. SMYTH,
Chief Justice of the Court of Appeals
of the District of Columbia.

Service accepted this 6" day of August, A. D. 1919.

JAMES B. ARCHER,
Ass't U. S. Att'y, D. C.

37 In the Court of Appeals, District of Columbia, January Term, 1919.

No. 3225.

LESLIE C. STALLINGS, Appellant,

vs.

MAURICE SPLAIN, United States Marshal in and for the District of Columbia, Appellee.

Assignment of Errors.

1st. The Court erred in its judgment that Appellant's arrest and detention on June 10, 1918, was made under and by authority of the provisions of Section 930 of the Code of Laws for the District of Columbia:

2nd. The Court erred in its judgment that the United States Commissioner had jurisdiction of the person of Appellant previous to the full and final determination of the merits of the Writ of Habeas Corpus under which he was released from prison under good and sufficient bail on June 11, 1918:

3rd. The Court erred in its judgment that the Appellant waived any of his legal rights as embraced in the Writ of Habeas Corpus by giving bail in compliance with the alternative order of the United States Commissioner on July 5, 1918:

4th. The Court erred in its judgment that the preliminary arrest on June 10, 1918, and the discharge of Appellant's writ thereunder was regular and legal:

5th *5th.* The Court erred in its failure to consider and sustain Appellant's assignment of error #3, which alleged "the Court erred in overruling Defendant'e plea that the allegations of the respective counts in the indictment failed to charge a crime against any law, or laws of the United States, and especially against the provisions of Section #97 of the Criminal Code of the United States":

6th. The Court erred in its failure to consider and sustain Appellant's assignment of error #4, which alleged "the Court erred in overruling Defendant's plea that the United States Commissioner is not an officer of the United States within the meaning of Section #97 of the Criminal Code of the United States":

38 7th. The Court erred in its failure to consider and sustain Appellant's assignment of error #5, which alleged "the Court erred in overruling Defendant's plea that the ownership of the respective sums of money alleged to have been embezzled is not set forth with sufficient legal precision as to advise him fully in respect thereto":

8th. The Court erred in its failure to consider and sustain Appel-

lant's assignment of error #6, which alleged "the Court erred in directing Isaac R. Hitt, United States Commissioner, to return his transcript of proceeding in this cause, together with the original bail bond, into the United States Court for the District of Wyoming, prior to the final disposition of this said cause on appeal":

9th. The Court erred in its failure to consider and sustain Appellant's assignment of error #1, which alleged "the Court erred in overruling Defendant's demurrer".

WILLIAM B. JAYNES,
Attorney for Appellant.

39 [Endorsed:] No. 3225. In the Court of Appeals, District of Columbia, January Term, 1919. Leslie C. Stallings, Appellant, vs. Maurice Splain, U. S. Marshal. Assignment of Errors. Court of Appeals, District of Columbia. Filed Aug. 7, 1919. Henry W. Hodges, Clerk.

40 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numberes from 1 to 38 inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals, in the case of Leslie C. Stallings, Appellant, vs. Maurice Splain, United States Marshal in and for the District of Columbia. No. 3225, April Term, 1919, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 7th day of August, A. D. 1919.

[Seal Court of Appeals, District of Columbia, 1893.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 27,289. District of Columbia Court of Appeals. Term No. 534. Leslie C. Stallings, appellant, vs. Maurice Splain, United States Marshal in and for the District of Columbia. Filed September 4th, 1919. File No. 27,289.

In the Supreme Court of the United States

OCTOBER TERM, 1919.

LESLIE C. STALLINGS, APPELLANT, v. MAURICE SPLAIN, UNITED STATES MARSHAL in and for the District of Columbia.	No. 534.

ON APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTION ON BEHALF OF APPELLEE TO ADVANCE.

Comes now the Solicitor General on behalf of the appellee, and respectfully moves the advancement of the above-entitled cause for hearing during the present term.

Appellant was apprehended in the District of Columbia on a bench warrant issued by the District Court for Wyoming, charging embezzlement, in violation of section 97, Penal Code. A petition for writ of habeas corpus was filed in the Supreme Court of the District of Columbia and appellant released on bail pending final hearing. Subsequently, but prior to such final hearing, he was arrested on a warrant issued by a United States commissioner for the Dis-

trict of Columbia and held to bail to secure his appearance before the Wyoming court. On certiorari the proceedings before the commissioner were certified to the Supreme Court of the District of Columbia, it being contended that the commissioner had no jurisdiction in the premises during the pendency of the habeas corpus case. Demurrer was also interposed to the return made by the marshal to the writ of habeas corpus. The demurrer was overruled and the case appealed to the Court of Appeals of the District of Columbia. This appeal is taken from an order of that court affirming the decree of the court of first instance, the appellate court holding that by pleading to the complaint filed before the commissioner and by giving bail to secure his appearance before the Wyoming court, appellant had waived any right he might have had to question the jurisdiction of said commissioner.

It is desired that early hearing may be had in this case in order that appellant may be as speedily as possible brought to trial on the indictment found against him in Wyoming. Appellant is now at liberty on bail pending the determination of this appeal.

Notice of this motion has been served on opposing counsel.

ALEX. C. KING,
Solicitor General.

MARCH, 1920.

○

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 534.

LESLIE C. STALLINGS, APPELLANT,

vs.

MAURICE SPLAIN, UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF COLUMBIA, APPELLEE.

ON APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF OF APPELLANT IN OPPOSITION TO MOTION OF APPELLEE TO ADVANCE.

Now comes the appellant by his attorney, William B. Jaynes, and opposes the motion to advance the above-entitled cause for hearing during the present term, for the reason that the questions of law presented for determination by this court are intricate, difficult, and complicated, and require more time for careful and thorough preparation than would be available if the case is taken out of its regular position and

advanced, and submits the following statement of facts in support of such opposition:

Appellant was arrested in the District of Columbia on June 10, 1918, by the appellee on a bench warrant issued by the United States District Court of Wyoming, charging embezzlement as United States commissioner, in violation of section 97, Penal Code. A petition for writ of *habeas corpus* was filed in the Supreme Court of the District of Columbia on June 11, 1918, and appellant was released on bail to await the termination of that proceeding. The hearing on that writ was fixed for July 16, 1918. On July 5, 1918, appellant was again arrested by the appellee on the identical charge as that set forth in the warrant of arrest executed June 10th in response to a warrant issued by a United States commissioner in the District of Columbia. The appellant was carried before a United States commissioner, and after hearing was held for removal, notwithstanding the then pending *habeas corpus* proceedings. When appellant's removal to Wyoming was directed by the commissioner he then, in order to avoid imprisonment, gave bail for his appearance in that court. On the 8th day of July, 1918, appellant filed a motion with the United States commissioner, asking that he vacate all his proceedings in connection therewith, and await the final findings in the then pending *habeas corpus* proceedings, and that motion was denied. Subsequently a writ of certiorari was issued by the Supreme Court of the District of Columbia, and a review asked of the commissioner's proceedings; but that writ was dismissed on August 20, 1918; appeal was taken to the Court of Appeals of the District of Columbia, where the proceedings of the lower court were sustained, and from that decision this appeal was taken.

Appellant further alleges that the record in this case was not available until the 15th day of February, 1920, and therefore it will be practically impossible to properly prepare the brief and argument on the important questions involved therein in a shorter time than the regular and orderly pro-

cedure of this court allows, and therefore the appellant respectfully prays that the motion to advance be denied, and this case be called for argument in its regular order, according to the rules and practice of this court.

The motion to advance, the appellant respectfully submits, shows no urgent necessity therefor.

Respectfully submitted,

WILLIAM B. JAYNES,

Attorney for Appellant.

(1014)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 534.

LESLIE C. STALLINGS, APPELLANT,

vs.

MAURICE SPLAIN, UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF COLUMBIA, APPELLEE.

BRIEF FOR APPELLANT.

Statement of the Case.

Leslie C. Stallings, appellant, and hereinafter in this brief called petitioner, was arrested on the 10th day of June, 1918, in the District of Columbia, by the appellee, Maurice Splain, United States Marshal in and for the District of Columbia, upon a warrant issuing out of the District Court of the United States for the District of Wyoming on the 15th day of May, 1918, charging the said Leslie C. Stallings with having committed "embezzlement of moneys in connection with land office matters (8 counts)," in "violation of sec. 97, F. P. C. 1910." On the 11th day of June the

petitioner filed in the Supreme Court of the District of Columbia his petition for the writ of *habeas corpus*, alleging in substance his arrest on the day and year aforesaid, at the District aforesaid, upon the warrant aforesaid, and that he had not been accorded due process of law as to notice of the alleged charges against him. Upon the said petition a writ of *habeas corpus* issued, June 11, 1918, to the appellee herein, commanding him to have the body of the said petitioner in Criminal Court No. 2, Emery Building, City of Washington, immediately after the receipt of the said writ upon him. No return was filed by the appellee to this writ until the 16th day of July, 1918, and at that time appellee set up substantially the facts of the arrest and obedience of appellee to the mandate of the writ in producing the body of the petitioner as in said writ commanded, a continuance of hearing upon said writ to a future time, and petitioner's release under bail bond in the sum of $2,000.00, conditioned for his future appearance for hearing as aforesaid. The return then averred substantially the facts which constitute the basis of this appeal.

Prior to hearing had upon this writ of *habeas corpus*, however, and while petitioner was under bail and on liberty upon his bond, on the 27th day of June, 1918, a sworn complaint was made before Isaac R. Hitt, a United States Commissioner in and for the District of Columbia, by Frank M. Helan, a United States Deputy Marshal under appellee, upon which the said Isaac R. Hitt issued his warrant of arrest of even date with said complaint, and on the 5th day of July, while the petitioner was still at liberty on the bail bond pending the hearing on the writ of *habeas corpus* aforesaid, he was a second time arrested by F. L. Hudson, a United States Deputy Marshal under appellee, this time upon the warrant issued by the said United States Commissioner but setting forth the same charge and the alleged commission of the same offense as set out in the original warrant upon which petitioner was arrested June 10, 1918. On July

5th a hearing was had before the United States Commissioner to determine whether there existed probable ground to believe petitioner guilty as charged. There were produced in evidence a certified copy of the indictment, the original bench warrant and certain letters, which, together with your petitioner's admission of his identity, and of the fact that he was a United States Commissioner for the District of Wyoming at the times charged in the indictment, constituted the sole evidence upon which the Commissioner could have found probable cause to believe petitioner guilty of the charge alleged.

On the same day, it appearing to the Commissioner that the laws of the United States had been violated as charged in the complaint, and that probable cause had been shown to believe petitioner guilty of the alleged offense, it was ordered that petitioner give bond in the sum of $2,000.00 for his appearance before the United States District Court in and for the District of Wyoming, which was accordingly done. On the 8th day of July petitioner filed before the Commissioner his motion to vacate and set aside his order compelling petitioner to give said bond, setting up his arrest and release on *habeas corpus*, continuance of the hearing thereon to July 16, 1918; likewise the issuance of the Commissioner's warrant upon the sworn complaint while the *habeas corpus* proceedings were still pending and unheard, and praying that, in view of the foregoing facts, he, the said Commissioner, should enter an order setting aside the order of commitment and fixing bail passed as hereinbefore set out.

This motion was denied, and then petitioner, on the 18th day of July, 1918, filed in the Supreme Court of the District of Columbia his petition praying for the issuance of a writ of certiorari to Isaac R. Hitt, United States Commissioner in and for the District of Columbia, to certify to the said Supreme Court the proceedings in the case of your petitioner, and all things touching the same. The writ issued in accordance with this petition on the 18th day of July, 1918, and respondent certified the proceedings in the cause and

all things touching the same, as fully set out in the record, pages 10 to 25, inclusive. On July 25th hearing was had not only upon the petition for the writ of *habeas corpus*, the writ issued thereon, the return thereto, and the demurrer to said return filed by petitioner, but also upon the petition for the writ of certiorari, the writ and return thereto; and, on August 20, 1918, there was passed an order overruling petitioner's demurrer to the return to the writ of *habeas corpus*, dismissing the petition for the said writ of *habeas corpus*, and discharging the writ issued thereon. To this action of the court in overruling petitioner's demurrer and dismissing the petition for the writ and discharging the writ itself, petitioner, by his counsel, duly excepted.

In the same order the court dismissed the petition for the writ of certiorari and the writ issued thereon and remanded to the respondent, Isaac R. Hitt, aforesaid, the proceedings certified in his return to the writ aforesaid. To this action of the court, petitioner, by his counsel, duly excepted and the cause was carried before the Court of Appeals of the District of Columbia upon the six errors (Rec., p. 28) assigned. The cause was duly heard by the said court, and the judgment of the lower court was sustained (Rec., pp. 30-32). From that judgment under an appropriate order an appeal has been prosecuted to this court under nine assignments of error (Rec., p. 35), and which are stated as follows:

Assignment of Errors.

1st. The court erred in its judgment that appellant's arrest and detention on June 10, 1918, was made under and by authority of the provisions of section 930 of the Code of Laws for the District of Columbia.

2nd. The court erred in its judgment that the United States Commissioner had jurisdiction of the person of appellant previous to the full and final determination of the merits of the writ of *habeas corpus* under which he was re-

leased from prison under good and sufficient bail on June 11, 1918.

3rd. The court erred in its judgment that the appellant waived any of his legal rights as embraced in the writ of *habeas corpus* by giving bail in compliance with the alternative order of the United States Commissioner on July 5, 1918.

4th. The court erred in its judgment that the preliminary arrest on June 10, 1918, and the discharge of appellant's writ thereunder was regular and legal.

5th. The court erred in its failure to consider and sustain appellant's assignment of error No. 3, which alleged "the court erred in overruling defendant's plea that the allegations of the respective counts in the indictment failed to charge a crime against any law, of laws of the United States, and especially against the provisions of section No. 97 of the Criminal Code of the United States."

6th. The court erred in its failure to consider and sustain appellant's assignment of error No. 4, which alleged "the court erred in overruling defendant's plea that the United States Commissioner is not an officer of the United States within the meaning of section No. 97 of the Criminal Code of the United States."

7th. The court erred in its failure to consider and sustain appellant's assignment of error No. 5, which alleged "the court erred in overruling defendant's plea that the ownership of the respective sums of money alleged to have been embezzled is not set forth with sufficient legal precision as to advise him fully in respect thereto."

8th. The court erred in its failure to consider and sustain appellant's assignment of error No. 6, which alleged "the court erred in directing Isaac R. Hitt, United States Com-

missioner, to return his transcript of proceeding in this cause, together with the original bond, into the United States Court for the District of Wyoming, prior to the final disposition of this said cause on appeal."

9th. The court erred in its failure to consider and sustain appellant's assignment of error No. 1, which alleged "the court erred in overruling defendant's demurrer."

ARGUMENT.

Assigned Error 1.

The lower court states in its opinion that this appellant was arrested, held and removal directed to a foreign district of the United States under section 930 of the Code of Laws of the District of Columbia. It is respectfully submitted that the said section is wholly foreign to an arrest made under any process of the United States, and is only applicable to those persons who may be arrested within the District of Columbia charged with a crime against the laws of the States of this Union. Defendants charged with crimes against the laws of the United States are arrested and their removal to a foreign district provided for under section 1014 of the Revised Statutes. A judge of the Supreme Court of the District of Columbia, with respect to the *extradition* and *removal* of those under arrest for the violation of State laws or United States laws, sits, so to speak, in a dual capacity. When the violation of the law of the State is involved the judge, in the matter of extradition, must act within the narrow and prescribed limits which would surround the Governor of another State in such an application. When the violation of a law of the United States is involved, then a judge of the Supreme Court of the District of Columbia sits in the broad sphere of a judge of a district court of the United States. When sitting as a Governor, a judge of the Supreme Court of the District of Columbia must observe all the narrow confines of a Governor

with respect to the laws of a demanding State, and therefore is not permitted to consider the force, power and effect of informalities and prescribed requisites for the successful charging of a crime; but must accept as a general rule the papers of the demanding State at their face value. When this judge is sitting in a removal case in response to the request of a Federal district he is authorized to view all the papers from every legal standpoint, because he is sitting as an equal with the judge before whom the defendant must be tried, and is equally interested in the proper construction of the laws of the United States. It is his plain duty to dismiss under *habeas corpus* proceedings where the submitted papers do not legally charge a crime against the laws of the United States; otherwise, defendants would often be subjected to great hardships by transportation across the continent only to be dismissed from further proceedings because the Government under the allegations could not sustain the charge that a crime had been committed.

The District of Columbia is a district of the United States within the meaning of section 1014, authorizing the removal for trial of a person charged with an offense against the United States to the Federal district where the trial is to be had. Benson *vs.* Hinkel, 198 U. S., 1; U. S. *vs.* Hyde, 199 U. S., 62.

Assigned Error 2.

The court erred in overruling the contention of petitioner to the effect that the United States Commissioner was wholly without jurisdiction to act in the cause during the pendency of an application for discharge on *habeas corpus* in the Supreme Court of the District of Columbia, and which in no manner had been heard on its merits.

Reference to the record will show that the petition for *habeas corpus* was filed in this cause on the 11th day of June, 1918, and from that date, by proper order of court, hearing upon the merits was continued to and until the 25th day of July, 1918, during which time petitioner was

admitted to bail. During the pendency of this hearing, proceedings before the United States Commissioner were instituted by swearing to the written complaint of June 27, 1918, and issuance of warrant upon said complaint by the Commissioner; and on the fifth day of July, petitioner was again arrested on a warrant, which, as is set forth in this record, charged the petitioner with having committed substantially and in fact the same offenses, provable by the same facts, against the same sovereignty, and in the same jurisdiction, as formed the basis of the charge set out in the original warrant, which then awaited the determination of the Supreme Court of the District of Columbia in a hearing not yet had. It is submitted that the Commissioner's conduct in thus issuing a warrant while there was still pending a hearing before the Supreme Court of the District of Columbia upon a writ of *habeas corpus* issued on a petition raising the legality of petitioner's arrest under practically and identically the same charge was without jurisdiction; for pending this hearing upon the writ of *habeas corpus*, the petitioner was under the control and direction of the Supreme Court of the District of Columbia. He was then detained, not under the original commitment, but under the authority of the writ of *habeas corpus*, and, up and until a final hearing upon the merits of the petition had been had, he was so completely and fully within the jurisdiction and control of the Supreme Court of the District of Columbia that the United States Commissioner could not under the law virtually deprive the Supreme Court of the District of Columbia of its jurisdiction by arresting, as he did, the petitioner, and holding him to bail in the removal proceedings. That petitioner was under the control and direction of the Supreme Court of the District of Columbia was decided as early as the case of Barth *vs.* Clise, 12 Wall., 400; 20 U. S. (L. Ed.), 393. And that the United States Commissioner was equally without jurisdiction in the proceedings which he instituted and conducted from the 27th day

of June through the 8th day of July, is equally established on principle.

A similar question was raised in the case of *In re* Farez, 8 Fed. Cases, page 1006, case No. 4644, in the Circuit Court of the Southern District of New York. In that case it was distinctly held that the petitioner must be considered as having been under and in the custody of the court issuing the writ of *habeas corpus* at least from the time the writ was served on the marshal, and that the marshal had no right after that time, and during the pendency of the writ, to arrest Farez upon any warrant not in his hands at the time the writ was served upon him. In stating the rights of Farez the court said:

> "The writ of *habeas corpus* having been issued on the 6th of November, commanding the marshal to produce the body of Farez on the 10th of November, at 11 o'clock a. m., Farez must be considered as being, under said writ, in the custody of the court, at least from the time the writ was served on the marshal, and the marshal had no right, after that time, during the pendency of the writ, to arrest Farez upon any new warrant, or upon any warrant not in his hands at the time the writ was served upon him. The return by the marshal, at the day and hour specified in the writ as the time for the return thereof, states that he arrested Farez on the 10th of November under a warrant dated on the 9th of November. It appears in evidence that the writ was served on the marshal prior to the time when he arrested Farez under the warrant of the 9th of November. Such arrest, on the second warrant, was, therefore, illegal. Farez was entitled to have the question determined as to the lawfulness of his imprisonment and detention by virtue of the process on which he was claimed to be held at the time the writ of *habeas corpus* was served on the marshal. The proceedings under the writ had relation to at least as early a period as that. When the question of the lawfulness of the detention under the first warrant should have been disposed of, then the marshal could proceed to execute the second warrant, but not before."

It is submitted therefore, that the warrant of the United States Commissioner was illegal, null, and void, that he acquired no jurisdiction over petitioner, and that his entire proceedings were void and of no effect.

Assigned Error 3.

It surely cannot be successfully contended that this appellant waived any right to which he was entitled under his original application for writ of *habeas corpus* after he was seized by a Deputy United States Marshal, carried before a United States Commissioner, and there ordered held for removal to a foreign district, by giving bail instead of being incarcerated in prison to await an ordeal for removal. Appellant had sought the great protecting power afforded by the writ of *habeas corpus*, and he was awaiting a judicial determination of his rights thereunder when his person was seized a second time on the original charge. His second arrest prior to a full judicial determination of the legality of the first arrest is so foreign to the rights of an applicant for a writ of *habeas corpus* that any reasonable steps taken by himself to avoid imprisonment and removal to a foreign district surely were fully justified under all of the facts.

Assigned Errors 4 and 5.

The merits of the assigned errors 4 and 5 are involved in the general discussion of the remaining seven errors, and therefore an argument here it is believed would be mere surplusage.

Assigned Error 6.

The sixth assignment of error is based upon the court's action in overruling petitioner's contention that the allegations of the respective counts in the indictment failed to

charge a crime against any law or laws of the United States, and more particularly against the provisions of section 97 of the Criminal Code of the United States, and also the court's action in overruling the petitioner's contention that the ownership of the respective sums of money alleged to have been embezzled was not set forth with that legal precision requisite to advise him fully in respect thereto.

Record, pages 17 to 22, inclusive, sets forth the indictment offered in the proceedings by the United States Commissioner, and which, together with the petitioner's admission as to his identity and the fact of petitioner's being a United States Commissioner at the times alleged in said indictment, constituted the sole evidence upon which the Commissioner could find probable cause that petitioner herein was guilty of the crime alleged. The indictment is in eight counts, each similar to the other, and an examination of the language of one is decisive of the questions raised with regard to them all. A reading of each and every count shows that the charge in substance against petitioner was that on a certain date in 1917, while he was a resident of the town of Encampment, in the State of Wyoming, and "then and there United States Commissioner in and for the district of Wyoming, duly appointed, qualified, and acting as such Commissioner, did, by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, received and had in his possession, and under his control, certain moneys * * * which said moneys, he, the said Leslie C. Stallings, had received as such United States Commissioner from one * * * to be paid over to the receiver of the United States Land Office, at Cheyenne, in the State of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid, did unlawfully convert to his own use, and fraudulently embezzle, against the peace and dignity of the United States, *et cetera*." It is submitted that this charge on its face proves that petitioner could not, under the law, have been guilty of not only any crime but more particularly any

crime against the United States, and especially under section 97 of the Criminal Code of the United States, for the reason that: First, the charge on its face shows that petitioner did nothing *as an officer of the United States* which would bring him within the inhibition of section 97 of the Criminal Code aforesaid, and that if he had been guilty of an embezzlement or a fraudulent conversion of moneys coming into his hands, the embezzlement and fraudulent conversion were made not contrary to any Federal Statute, but if any, against the peace and dignity of the State of Wyoming; and that petitioner, if he ever were guilty of an embezzlement or fraudulent conversion, was so not in his capacity as a United States Commissioner but in his private capacity, as an agent, employee, attorney, or what not of some private individual, who had entrusted to him moneys for a use or under a trust not contained within his duties, rights, or powers as a United States Commissioner; second, the charge on its face sets forth the commission of no offense, in that in no place in said charge is there contained any allegation of ownership sufficient to make out the offense of embezzlement therein alleged. Third,

While it has been so often held that in a removal proceeding the insufficiency of an indictment will not be inquired into, and that that is a question to be decided by the court in which the indictment was found, and that technical objections and criticisms growing out of the artificial and often strained scrupulousness of criminal procedure are to be left to the court in whose jurisdiction the indictment is found, provided the said indictment itself contains a narration of events and acts which tends to establish the existence of the offense said to be charged; nevertheless, it is equally true that where upon a broad, liberal, and inartificial construction of the language of the indictment it does not appear that any offense against the laws of the United States has been committed, section 1014 of the Revised Statutes does not apply and the prisoner should not be held for re-

moval. *In re* Benson, 131 Fed. Rep., 968, 969; Tinsley *vs.* Treat, 205 U. S., 20; Hard *vs.* Splain, 45 D. C. Appeals.

It is submitted there is nothing contained in the allegations of any of the counts of the indictment contained within this record which shows any crime to have been committed. When an indictment found in the trial district charges no offense against the laws of the United States the court is not justified in ordering removal. Greene *vs.* Hinkel, 183 U. S., 249; *in re* Wolf, 27 Fed., 606; *in re* Corning, 51 Fed., 205; *in re* Terrell, 51 Fed., 213; *in re* Greene, 52 Fed., 104; *in re* Doig, 4 Fed., 193; *in re* Buell, 4 Fed. Cas., #2102, and all such matters may be inquired into and determined by a district judge on an application for removal either when the motion for a writ of removal is pending, and on such motion, or by *habeas corpus*. U. S. *vs.* Rogers, 23 Fed., 658.

A United States Commissioner cannot receive money from anybody to be paid over to the receiver of any United States land office, as United States Commissioner. He may while holding the office of a United States Commissioner perform acts for which he may be rendered liable under the Criminal law, but those acts may be either within his jurisdiction and right or without his jurisdiction and without his right as a United States Commissioner. And it is not difficult to determine how far he may act as commissioner insomuch as the office and his jurisdiction, duties, and rights are alike determined by statute. Nowhere will it be found that he "as such United States Commissioner" can receive money from anyone "to be paid over to the receiver of the United States Land Office," at any point. It is surmised that the charge has reference to section 2294 of the U. S. Revised Statutes as amended by the act of March 4, 1904 (33 Stat., 59), but a reading of that act gives to a commissioner no other authority or right in and about land matters other than taking certain proofs, affidavits, and oaths required to be made by applicants and entrymen under the homestead and similar acts. The act gives him no authority to receive

money to transmit the same to the General Land Office. It specifies the fee he may charge for taking an affidavit, *et cetra,* but in nowise makes him a receiving agent of the United States for the purpose of the transmission of whatever fees may be required at the General Land Office or other work. The powers of the United States Commissioner may be generally enumerated as follows:

1. To issue warrants for offenders against the United States, cause them to be arrested, imprisoned, or bailed for trial.

2. To order them removed to other districts (U. S. Rev. Stats., 1014, Comp. Stats. (1913), sec. 1674.

3. To hold to security of the peace and for good behavior. U. S. Rev. Stats., sec. 727, Comp. Stats. (1913), p. 536.

4. To carry into effect the awards of foreign consuls. Comp. Stats., 1913, sec. 1248.

5. To sit as arbitrator between the captains and crews of vessels belonging to the United States, whose interests are committed to his charge, and to enforce his decisions in regard thereto. Comp. Stats. (1913), sec. 1248.

6. To take bail and forfeitures in civil cases. U. S. Rev. Stats., 945.

7. To discharge poor convicts imprisoned for non-payments of fines. U. S. Stats., sec. 1042.

8. To take certain acknowledgements. U. S. Rev. Stats., sec. 1778.

9. To institute proceedings under the laws relative to crimes against the elective franchise and civil rights of citizens, and to appoint persons to execute warrants thereunder. Comp. Stats. (1913), secs. 3935 and 3938.

10. To issue search warrants in Internal Revenue. Comp. Stats. (1913), sec. 8380.

11. Customs. Comp. Stats. (1913), sec. 5769.

12. Counterfeiting cases. Comp. Stats. (1913), sec. 10143.

13. To issue warrants for deserting foreign seamen. Comp. Stats. (1913), sec. 8389.

14. To summon masters of vessels to show cause why process should not issue. Comp. Stats. (1913), sec. 8335.

15. To issue warrants for, and examine, fugitives from justice. Comp. Stats. (1913), secs. 10110, 10114.

16. Try cases arising under the Chinese exclusion acts.

17. To take depositions *de bene esse* and depositions to file.

18. To issue a warrant in a proper case for the arrest and imprisonment of the judgment debtor on an execution issued out a Federal court. Hayes *vs.* Canada, 184 Fed., 821.

19. To hear and determine applications for the discharge or arrest on mesne process out of Federal courts. Hayes *vs.* Canada, 184 Fed., 821.

20. When directed so to do, to conduct the summary investigations upon petitioners for remission of fines for violations of the customs-revenue laws. Comp. Stats. (1913), sec. 10133.

In none of the hereinbefore enumerated powers, duties, rights, and jurisdiction of United States commissioners can there be found any basis for the charge that a United States Commissioner can, *as such*, receive money from another to pay over that money *as such United States Commissioner* to a third person, so that in the event the said Commissioner should fraudulently convert the said money to his own use he can be charged as a United States officer with having

embezzled moneys under section 97 of the Criminal Code of the United States.

A similar question to the one at bar arose in the case of *In re* James, 195 Fed., 981, under proceedings for revocation of the appointment of a United States commissioner, and the cause dismissed on the ground that services similar to the ones rendered as set out in this indictment, if they were so rendered or undertaken to be rendered, were "rendered as an employee and not as an officer," and it was therein held that the commissioner had the right under the statute to charge and be compensated for services done under precisely the same act as it is surmised form the basis for the charge set forth in this indictment.

Assigned Error 7.

But it is submitted that even if it could be, and it is urged that it cannot be, construed that petitioner received the money "by virtue and under color of his said office as United States Commissioner, and embezzled and fraudulently converted the said moneys to his own use," still notwithstanding these facts, if they were facts, there is no sufficient allegation of ownership contained within any of the said counts aforesaid in this indictment to constitute any legal offense upon which probable cause could be found that the petitioner was guilty of any alleged offense. The allegation recites in substance in each and all of the counts that petitioner did, "while he was so acting as such officer, receive and have in his possession and under his control, certain moneys to a large amount * * * which said moneys, he, the said Leslie C. Stallings, had received as such United States Commissioner * * * to be paid over to the receiver of the United States Land Office * * * he, the said Leslie C. Stallings, then and there the said moneys aforesaid, did unlawfully convert to his own use and fraudulently embezzle." It is elementary that in any in-

dictment for embezzlement the allegation of ownership of the property alleged to have been embezzled must be averred, with the same precision as in an indictment for larceny.

Bishop's New Crim. Procedure, 2nd ed., vol. 3, sec. 320.
9 R. C. L., p. 1291.
15 Cyc., 517.
Clark's Criminal Procedure, 2nd ed., 267.

It is submitted that nowhere in the indictment is the ownership of the moneys alleged to have been embezzled set forth with that degree of precision and certainty required under the law, or averred with even that sufficient particularity to negative the presumption that the money could have belonging to the petitioner himself. Averments of unlawful conversion and fraudulent embezzlement do not reach back to cure the essential defect of earlier failure to sufficiently aver ownership, and this indictment carries on its face the earmarks of its own nullity in each and every count, by its failure to contain this essential averment. It is submitted, therefore, that upon the broadest construction which can be given to the indictment, it does not set forth facts which tend to allege any offense committed against the laws of the United States, and more particularly section 97 of the United States Criminal Code; that this could not, therefore, have formed that legal evidence requisite as a basis for the finding of probable cause, and insomuch as the indictment was practically the sole evidence upon which probable cause could have been found, the Court erred upon the hearing on the writ of certiorari in refusing to quash and hold null and void, and of no effect, the entire proceedings before the commissioner. And it further erred in refusing to hold that the respective counts in said indictment failed to charge any crime, in that the ownership of the respective moneys alleged to have been embezzled was not set forth with sufficient legal precision.

Assigned Error 8.

As urged elsewhere in this brief, it is believed that the whole of the proceedings before the United States Commissioner—the issuance of the warrant, the arrest of the Appellant, the finding of probable cause, and the acceptance of bail bond—were wholly void and of no effect, and therefore the transcript of the proceedings therein should not have been forwarded to the proper authorities in the foreign District. Such official records should have been retained in the custody of the Supreme Court of the District of Columbia until the final adjudication of all the questions involved in this controversy as to the rights of the appellant.

Assigned Error 9.

This assignment is based upon the court's action in overruling the petitioner's demurrer. The demurrer, as set forth (Record, p. 26) was filed to the marshal's return to the writ of *habeas corpus* set out in Record, page 3. The demurrer proceeded upon the grounds, first, that the said return was substantially insufficient, in that no facts were set forth therein sufficient in law to warrant the action taken by the United States marshal as set forth by him in said return, and, second, that neither the warrants nor the indictment as shown by the certified copy thereof, filed in the cause, were sufficient in law to warrant the restraining of the applicant in any manner. The return of the appellee herein to the writ of *habeas corpus* aforesaid (Record, p. 3) simply sets forth the fact of the arrest of petitioner on June 10, 1918, appellee's production of the body of the petitioner in obedience to the writ on the 11th day of June, 1918, the continuance granted by the court for hearing on said writ; the subsequent complaint before the United States Commissioner, June 27, 1918, the issuance of his warrant and the arrest of said petitioner July 5, 1918, and petitioner's voluntary appearance and ad-

mission of his identity and former official character as described in the said complaint; the evidence produced before the commissioner and petitioner's admission to bail for his appearance as hereinbefore set out. The discussion of Assignment of Error No. 2 has proven the substantial insufficiency of this return in that the second warrant issued was null and of no effect, as it issued during the pendency of the hearing upon the writ of *habeas corpus* in the Supreme Court of the District of Columbia which had not been had. The discussion of Assignments of Error 6 and 7 has so disposed of the sufficiency of the indictment as matter of law that any further discussion of this assignment is unnecessary. It is submitted, therefore, that to this return the demurrer should have been sustained, that it did not contain within it facts and averments legally sufficient to warrant the action of the marshal in his conduct toward petitioner, and did not contain any legal reasons for the course of action taken; that it showed upon its face a line of conduct taken subsequent to the 11th day of June, which was unlawful, in derogation of the jurisdiction of the Supreme Court of the District of Columbia over petitioner, and in disregard of his rights under the order of continuance granted him for hearing on the merits of the writ.

CONCLUSION.

It is submitted that, upon all the matters raised by the Assignments of Error in this record, the court committed serious and substantial error to the disadvantage of petitioner in the court below and that the case should be reversed and remanded with instruction that all proceedings before the Commissioner be quashed and that petitioner's prayer for release on the original writ be granted.

Respectfully submitted,

WILLIAM B. JAYNES.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

LESLIE C. STALLINGS, APPELLANT,
v.
MAURICE SPLAIN, UNITED STATES MARSHAL in and for the District of Columbia. } No. 534.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF ON BEHALF OF THE APPELLEE.

STATEMENT OF THE CASE.

The appellant, Stallings, was, during the year 1917, a United States Commissioner for the District of Wyoming. (R. 12–15.)

He was indicted by the grand jury on May 15, 1918, on eight counts, charging that on certain dates in 1917 he had received as such Commissioner from eight persons named eight separate sums of money to be paid over to the Receiver of the United States Land Office at Cheyenne, Wyoming, and had unlawfully converted the same to his use and fraudulently embezzled them. (R. 17–21.)

He was arrested on June 10, 1918, in the District of Columbia by the appellee, Splain, United States

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Marshal, on a bench warrant issued in Wyoming on this indictment. The amount of bail to be given was indorsed thereon to be $2,000. (R. 3, 22–23.)

He petitioned the Supreme Court of said District for a writ of habeas corpus, which was ordered to issue on June 11, 1918, returnable immediately. (R. 1, 2.)

The appellee, Splain, United States Marshal, responded on July 16, 1918, setting up said arrest on the Wyoming bench warrant on June 10, the issuance of said writ of habeas corpus, and that on June 11 petitioner was released under a bail bond in the sum of $2,000 for his further appearance on the hearing on said writ, said hearing being then continued to a later day. That on June 27, on removal affidavit before United States Commissioner Isaac R. Hitt, of the District of Columbia, setting up the commission of the same offenses charged in the Wyoming indictment, Stallings was arrested, and on July 5 came before said Commissioner for hearing. He admitted his identity and former official character and pleaded not guilty. The United States produced on its part a certified copy of the Wyoming indictment. Stallings, by his attorney, declined to offer evidence and moved for a discharge, which was denied. Thereupon he applied through his counsel to be admitted to bail for his appearance before the United States District Court for the District of Wyoming, and he was thereupon admitted to bail in the sum of $2,000, so conditioned, with George W. Ray as his surety. (R. 3, 4.)

The proceedings before Commissioner Hitt by petition for certiorari, were prayed to be sent up to the Supreme Court of the District of Columbia, to be used in connection with the hearing to be had on the application for habeas corpus set for July 23, 1918. The writ was granted and the entire record of these proceedings sent up to said Supreme Court of the District of Columbia. (R. 5–25.)

The cause came on to be heard both on the petition for writ of habeas corpus, the return thereto, and on the proceedings in certiorari, before Mr. Justice Siddons in said Supreme Court, on July 25, 1918. On August 20, 1918, said justice rendered a decree dismissing the petition for the writ of habeas corpus and discharging said writ; also dismissing the petition for certiorari, and remanding the proceedings, shown by said petition and return, to Commissioner Hitt for further action according to law. (R. 26.) Petitioner was admitted to bail in the sum of $2,000 pending appeal. An appeal was taken to the Court of Appeals of said District, and on said appeal the judgment below was affirmed. (R. 27–32.)

From that judgment an appeal is taken to this court. (R. 32–36.)

QUESTIONS INVOLVED.

The petition for this appeal states the legal questions relied on as authorizing the same. (R. 32.)

The errors assigned are set forth in appellant's brief (pp. 4–6), and are not repeated.

The questions raised are really these:

1. That he could not be lawfully arrested in the District of Columbia on the bench warrant issued from the United States District Court in Wyoming.

2. That while the hearing on the writ of habeas corpus was pending no proceedings could be lawfully taken before a United States Commissioner or court to have him removed to Wyoming for trial on the indictment pending in the United States District Court there.

3. That no arrest under the bench warrant, or under the warrant of Hitt, Commissioner, is lawful, because no offense is set up against any United States statute, and particularly against Criminal Code, section 97.

The charge is that certain moneys were paid to Stallings, as a United States officer, to be by him paid over to the Receiver of the Land Office at Cheyenne. The appellant contends that it is no part of the duty of Stallings as a Commissioner to receive and pay over such moneys and that in so doing he acted alone as an individual. Hence he did not violate the United States statutes.

ARGUMENT.

I.

The arrest under the bench warrant was legal and proper.

The warrant ran through the United States so as to permit an arrest.

2 Moore on Extr. sec. 540.

The defendant might have preferred to give bail to appear in the court in Wyoming, and thus obviate removal proceedings.

Rev. Stat. sec. 1014. (*Comp. Stat. 1916*, sec. 1674.)

If he did not so prefer, then a proceeding to obtain an order for removal would follow. (*Ib.*)

II.

That he was on bail pending a hearing on *habeas corpus* would not prevent a proceeding to be adopted as though no attempt to proceed on the bench warrant had been made. It at most could only amount to an abandonment of the arrest on the bench warrant and did not prevent the Commissioner from hearing the question of removal and ordering the same.

Peckham v. *Henkel*, 216 U. S. 483.

III.

But the defendant by voluntary action terminated all proceedings either on the *habeas corpus*, or on the removal proceedings.

He elected to secure his immediate release from caption and detention under either warrant by exercising his right to give bail for his appearance at the proper time before the court in Wyoming.

This ended any possibility of a question remaining in either the habeas corpus, or removal, proceedings. It remitted all questions on the indictment to the trial court.

IV.

But in this case, by the action of the defendant, the *habeas corpus* case and the removal proceedings were all brought before one judge in the court wherein the *habeas corpus* case was pending.

In that hearing on the whole matter it was shown—

(*a*) That an indictment had been duly found and a copy was introduced in evidence.

(*b*) The identity of the party arrested with the person indicted, and his former official character, were admitted. The accused introduced no evidence, but insisted that the indictment did not charge an offense against the United States. Such a showing required the grant of the order for removal.

Rumely v. *McCarthy*, 250 U. S. 283, 288.
Hyde v. *Shine*, 199 U. S. 62, 84.
Haas v. *Henkel*, 216 U. S. 462.

The objections here urged to the indictment were properly left to be ruled on by the court in which it was pending.

Beavers v. *Henkel*, 194 U. S. 73.
Benson v. *Henkel*, 198 U. S. 1.

(*c*) The indictment charged an offense against the United States.

Where an applicant for a patent to public lands appears before a United States Commissioner, who is then and there acting as such, and pays over to him moneys to be transmitted to the Receiver of the Land Office located in another place, and such Commissioner appropriates such money to his own use, the Commissioner is guilty of embezzlement.

The original statute, authorizing affidavits to be made before United States commissioners instead of before registers and receivers of the land offices, was an extension of Revised Statutes, section 2294, and reads as follows:

> In any case in which the applicant for the benefit of the homestead, preemption, timber-culture, or desert land law is prevented, by reason of distance, bodily infirmity, or other good cause, from personal attendance at the district land office, he or she may make the affidavit required by law before any commissioner of the United States circuit court or the clerk of a court of record for the county in which the land is situated, and transmit the same, with the fee and commissions, to the register and receiver. (Act May 26, 1890, c. 355, 26 Stat. 121.)

This statute was amended in 1904 so as to read as follows:

> Hereafter all proofs, affidavits, and oaths of any kind whatsoever required to be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber and stone Acts, may, in addition to those now authorized to take such affidavits, proofs, and oaths, be made before any United States commissioner or commissioner of the court exercising Federal jurisdiction in the Territory or before the judge or clerk of any court of record in the county, parish, or land district in which the lands are situated * * * The proof, affidavit, and oath, when

> so made and duly subscribed, or which may have heretofore been so made and duly subscribed, shall have the same force and effect as if made before the register and receiver, when transmitted to them with the fees and commissions allowed and required by law. (Act Mar. 4, 1904, c394, 33 Stat. 59; Compiled Stat., 1916, sec. 4546.)

Following the act of 1904, the General Land Office, Interior Department, issued a circular in March, 1905 (33 L. D. 480), which was revised and reissued in 1915. Each circular was addressed to the officers authorized to take affidavits, etc., and entitled "Suggestions to United States Commissioners," etc. A direction appears in paragraph 5 of each circular requiring final proofs taken by United States commissioners to be reduced to writing and forwarded by the officer to the register and receiver.

In the circular of 1905, among the directions to the officers occurs this one:

> Eighth. After proofs have been taken in the manner indicated, they should be duly authenticated and properly transmitted to the register and receiver with the necessary fees and commissions. (33 L. D. 480, 481.)

The circular of 1915 reads as follows:

> The officer who has taken a proof should, after duly certifying the papers, promptly transmit them to the register and receiver. In no case should the transmittal thereof be left to the claimant. (44 L. D. 350, 352.)

It is to be noted that under the act of 1890, above quoted, "he or she" (the applicant) "may make the affidavit required by law before any commissioner of the United States court * * * and transmit the same with the fees and commissions to the register and receiver."

This and all preceding requirements direct the *applicant* to transmit the affidavit and fees, etc.

The act of 1904 changes this language and states that the affidavits, proofs, and oaths may be taken before any United States commissioner (or other officer mentioned), and that "when so made and duly subscribed * * * shall have the same force and effect as if made before the register and receiver, *when transmitted* to them with the fees and commissions required by law." [Italics ours.]

This omits the direction to the applicant to transmit, and in place says "when transmitted."

The last circular makes this clear by ordering—

> 8. The officer who has taken a proof should, after duly certifying the papers, promptly transmit them to the register and receiver. In no case should the transmittal thereof be left to the claimant. (44 L. D. 350, 352.)

As the fees and commissions are directed by the statute to be transmitted with the papers, clearly a delivery of the amounts to the United States Commissioner for transmission with the papers to the Register and Receiver is contemplated by the statute and constitutes the receipt thereof an official act on

the part of the Commissioner, and brings the embezzlement directly within the denunciation of Criminal Code, section 97, which reads in part as follows:

> * * * any officer of the United States, or any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or property which may have come into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or assistant, whether the same shall be the money or property of the United States or of some other person or party, shall, where the offense is not otherwise punishable by some statute of the United States, be fined not more than the value of the money and property thus embezzled or converted, or imprisoned not more than ten years, or both. (Compiled Stat. 1916, sec. 10265.)

CONCLUSION.

The judgment of the court below should be affirmed.

ALEX. C. KING,
Solicitor General.

APRIL, 1920.

○

STALLINGS *v.* SPLAIN, UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF COLUMBIA.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 534. Argued April 23, 1920.—Decided June 1, 1920.

A fugitive under indictment in one federal district may be arrested without a warrant by the marshal in another and may be detained for a reasonable time pending the initiation of removal proceedings; and a warrant issued upon the indictment in the first district will serve at least as probable cause for making the arrest. P. 341.

When a person so arrested and detained procures a writ of *habeas corpus* and is bailed by the court to await a hearing, the pendency of the *habeas corpus* proceedings does not prevent the initiation of removal proceedings based on such indictment by affidavit before a United States Commissioner and issuance of warrant thereon. P. 342.

And, in such circumstances, if he voluntarily appear before the commissioner and at his own request be bailed for his appearance in the foreign district to answer the indictment, the effect is to do away with any basis for the *habeas corpus*, since the actual restraint is terminated and the questions of the validity of the arrest and detention and of the right of removal are rendered immaterial. P. 343.

Under Rev. Stats., § 2294, as amended, and the rules of the General Land Office, a United States Commissioner who in taking proofs of applicants under the public land laws collects fees and commissions for transmission to the register and receiver, receives the money as commissioner and is indictable, if he embezzle it, under § 97 of the Penal Code. P. 344.

In removal proceedings doubts as to whether the indictment states an offense should be left to the court in which it was found. P. 345.

49 App. D. C. 38, affirmed.

THE case is stated in the opinion.

Mr. William B. Jaynes for appellant.

The Solicitor General for appellee.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

Stallings was indicted in the District Court of the United States for the District of Wyoming for embezzling monies entrusted to him as United States Commissioner. Being in the District of Columbia, he was arrested there by Splain, marshal for the District, and was detained to await the institution of proceedings for his removal. In making the arrest Splain had relied, not upon a warrant issued by a commissioner for the District, but upon a bench warrant issued to the marshal for the District of Wyoming on the indictment. Stallings filed immediately in the Supreme Court of the District of Columbia a petition for writ of *habeas corpus*, contending, for this reason apparently, that the arrest and detention were illegal. The writ issued; Splain produced the body; the hearing on the writ was postponed; and Stallings was admitted to bail.

While he was at large on bail, awaiting a hearing in the *habeas corpus* proceedings, an affidavit of complaint was filed before a United States Commissioner for the District, setting forth the same offences charged in the indictment. A warrant issued thereon, but Stallings was not arrested. He appeared voluntarily before the Commissioner; admitted his identity and that he held the office named at the times the offences were charged to have been committed; declined to offer any evidence; and moved that he be discharged. The Commissioner denied the motion. Then, certified copies of the indictment and other papers having been introduced, he found probable cause. No order was made that Stallings be held to await an application for his removal. He requested that he be admitted to bail for his appearance in Wyoming to answer the charges

against him. The bail was fixed at $2,000 and was furnished.

After this, Splain filed a return to the petition for writ of *habeas corpus* setting up the above facts and Stallings demurred. He also secured, in aid of the *habeas corpus* proceeding, a writ of certiorari by which all proceedings before the United States Commissioner were certified to the Supreme Court of the District. The case was then heard both upon the demurrer to the petition for writ of *habeas corpus* and upon the return to the writ of certiorari. The demurrer was overruled; and, Stallings electing to stand thereon, the court dismissed the petition for a writ of *habeas corpus* and discharged the writ issued thereon. The petition for a writ of certiorari and the writ issued thereon were also dismissed and the proceedings were remanded to the Commissioner for further action. Stallings appealed to the Court of Appeals of the District which affirmed the final order below. 49 App. D. C. 38. It is contended here that Stallings should be discharged; (a) because the original arrest and detention on the bench warrant were illegal and the later proceedings before the Commissioner were without jurisdiction since he could not legally be re-arrested for the same offence until the *habeas corpus* proceeding had been disposed of; (b) because the affidavit and the indictment fail to charge a crime against the United States.

First. The original arrest and detention were lawful. A person duly charged with a felony in one State, may, if he flees to another, be arrested, without a warrant, by a peace officer in the State in which he is found and be detained for the reasonable time necessary to enable a requisition to be made. *Burton* v. *New York Central & Hudson River R. R. Co.*, 245 U. S. 315, 318. See *Kurtz* v. *Moffitt*, 115 U. S. 487, 504. The rule is not less liberal where the fugitive stands charged by an indictment found in one federal district and flees to another. See

2 Moore on Extradition, § 540. If the bench warrant issued in Wyoming was not effective as a warrant within the District of Columbia, the possession of it did not render illegal an arrest which could lawfully have been made without it. It would, at least, serve as evidence that Splain had reasonable cause to believe that a felony had been committed by Stallings. *Commonwealth* v. *Phelps*, 209 Massachusetts, 396, 404.

Second. The pendency of the *habeas corpus* proceeding did not deprive the Commissioner of jurisdiction to entertain the application for arrest on the affidavit of complaint. When Splain, in obedience to the writ, brought Stallings before the court, he passed from the custody of the marshal into that of the court and he remained under its protection and control although enlarged on bail. *Barth* v. *Clise*, 12 Wall. 400. But he did not thereby become immune from all other process until the *habeas corpus* proceedings should have been finally disposed of. *Commonwealth* v. *Hall*, 9 Gray, 262. Lack of jurisdiction in the Commissioner did not follow from the fact that the court had acquired, by virtue of the *habeas corpus* proceedings, the custody of and control over Stallings. Even if the affidavit of complaint had related to another indictment brought in a different district, the Commissioner would have had jurisdiction to entertain it. The question would merely have been whether a second arrest could properly be made where it conflicted with the first. *Peckham* v. *Henkel*, 216 U. S. 483; *In re Beavers*, 125 Fed. Rep. 988; 131 Fed. Rep. 366. Here there could be no conflict; for the second arrest, if it had been made, would have been merely for the purpose of carrying out the first. The Government was not precluded from taking such additional proceedings as it might deem necessary or advisable to supplement or perfect those originally instituted. If the original arrest was lawful, the detention would remain legal only for the reasonable time required to enable

appropriate removal proceedings to be instituted. Unless the lawful arrest was promptly followed by such proceedings the prisoner would be entitled to his discharge. *Matter of Fetter*, 23 N. J. L. 311, 321. On the other hand, if the orginal arrest and detention had been illegal, Stallings would not be entitled to his discharge, if before final hearing in the *habeas corpus* proceedings legal cause for detaining him had arisen through the institution of removal proceedings. Where it appears that sufficient ground for detention exists a prisoner will not be discharged for defects in the original arrest or commitment. *Nishimura Ekiu* v. *United States*, 142 U. S. 651; *Iasigi* v. *Van De Carr*, 166 U. S. 391; *Kelly* v. *Griffin*, 241 U. S. 6, 13.

Third. The admission to bail by the Commissioner to answer the indictment in the District of Wyoming was upon his own request on advice of counsel. When this bail was given no application had been made to the court for his removal; and there had not even been an order of the Commissioner that he be held to await such application. He ceased, therefore, to be in the position ordinarily occupied by one who is contesting the validity of his detention and who has been released on bail pending the *habeas corpus* proceeding. *Sibray* v. *United States*, 185 Fed. Rep. 401. Stallings' position was thereafter no better than if he had applied for the writ after he had given bail. It is well settled that under such circumstances a petitioner is not entitled to be discharged on *habeas corpus*. *Respublicc* v. *Arnold*, 3 Yeates, 263; *Dodge's Case*, 6 Martin, 569; *State* v. *Buyck*, 1 Brev. 460. Being no longer under actual restraint within the District of Columbia, he was not entitled to the writ of *habeas corpus*. *Wales* v. *Whitney*, 114 U. S. 564.

Furthermore, by voluntarily giving bail to appear in Wyoming, the purpose of the removal proceedings had been accomplished, and all questions in controversy in the *habeas corpus* and in the removal proceedings terminated.